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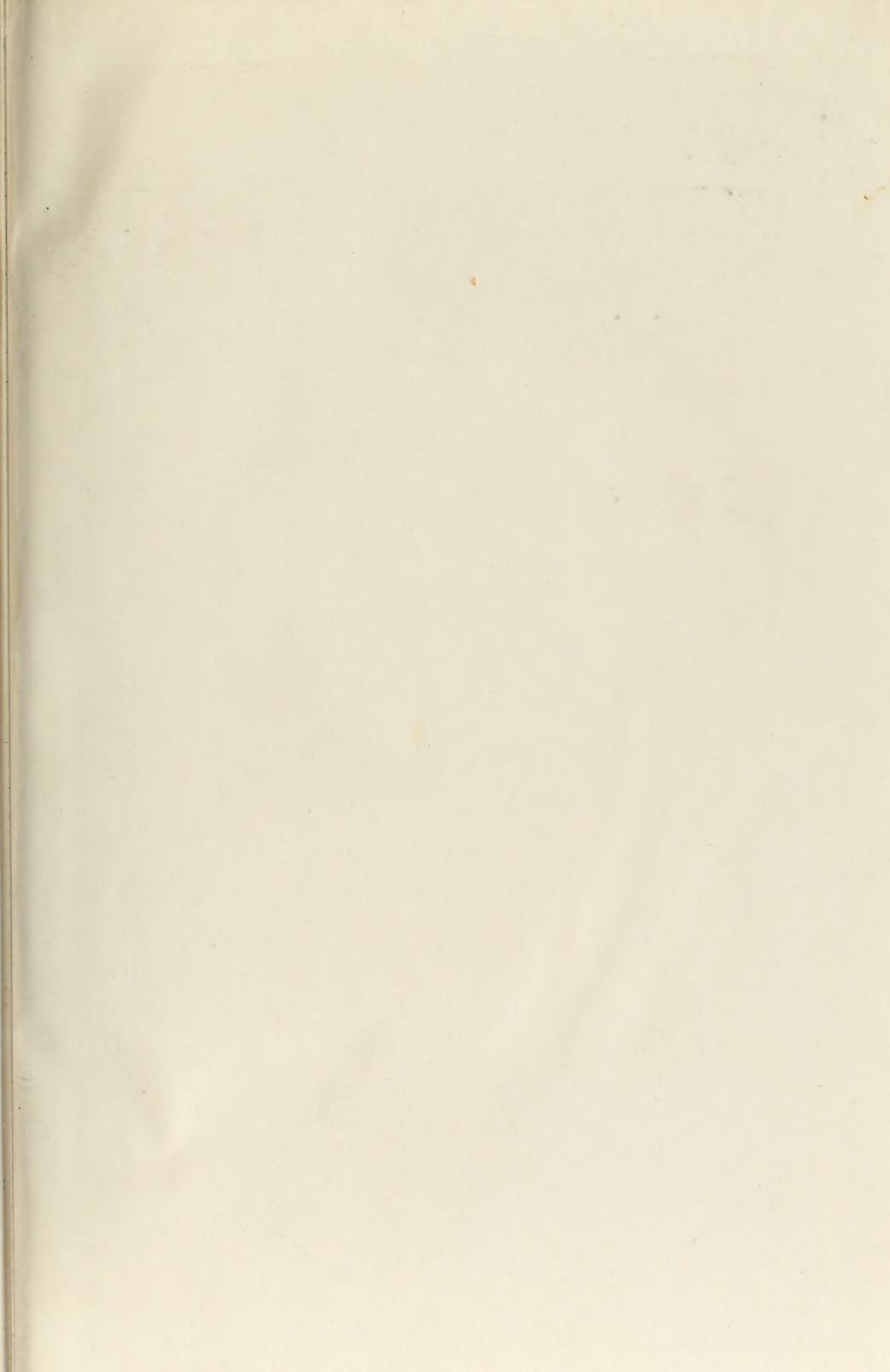
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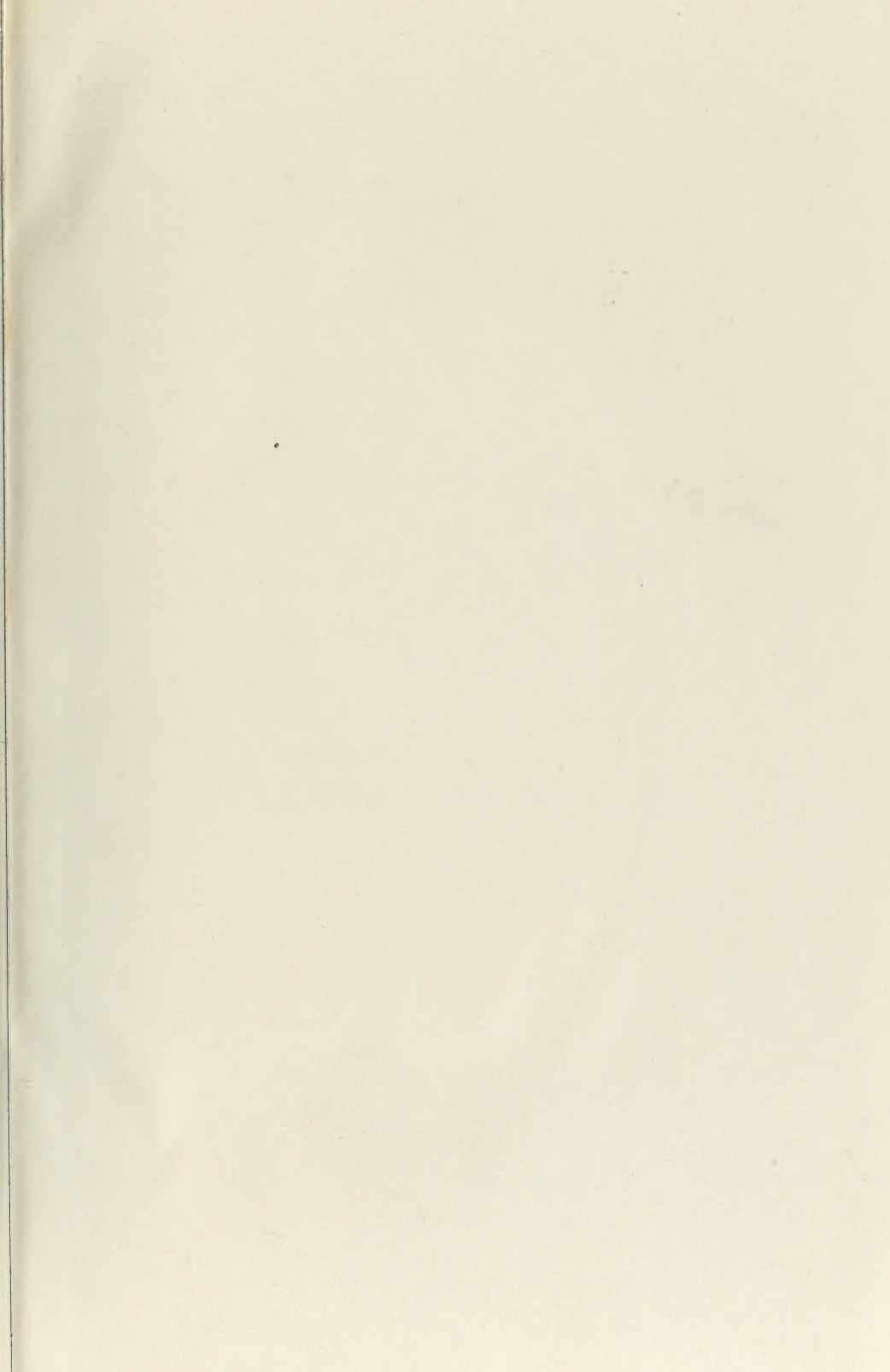
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1004
No. 2745

United States
Circuit Court of Appeals

For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Arizona.

Filed

APR - 4 1916

F. D. Monckton,

Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a Corpora-
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*In the Superior Court of the State of Arizona, in an
for the County of Maricopa.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Complaint.

Comes now the plaintiff, by Messrs. Hayes & Laney, his attorneys, and complaining of the defendant, for cause of action says:

I.

That the plaintiff is a resident of Maricopa County, Arizona, and that the defendant is now and was during all the times hereinafter referred to, a corporation and a common carrier, maintaining offices and doing business within and between the States of California and Arizona, owning property and conducting business in Maricopa County in the State of Arizona, and having an agent and representative within said Maricopa County, and engaged, among other things, in the transportation of freight for hire.

II.

That on the 1st day of July, 1913, and during all the other times hereinafter referred to, the plaintiff was the owner of one hundred and fifty-two (152) head of dairy cows; that on said 1st day of July, 1913, the plaintiff delivered said cows and all thereof to the agent of the defendant at San Luis Obispo,

California, for carriage to Phoenix, Arizona; that said cows were at the time of said delivery, robust, healthy, and in every way in first-class physical condition. That said agent on behalf of said defendant as a common carrier for hire, [3*] accepted said cows at said San Luis Obispo, California, a station on the defendant's line, and in consideration of the freight to be paid to the defendant for said services as measured by the rate applicable to the shipment and carriage of livestock in carload lots from said San Luis Obispo, California, to Phoenix, Arizona, as published and on file with the Interstate Commerce Commission, undertook to carry and transport said cows to Phoenix, Arizona, and to make delivery of said cows and all thereof to this plaintiff in good condition at said Phoenix, Arizona.

III.

That when said defendant company accepted the delivery of said cows, and undertook to transport them for the plaintiff from San Luis Obispo, California to Phoenix, Arizona it owed to the plaintiff the duty of transporting said cows safely between said points, and delivering said cows to the plaintiff at Phoenix, Arizona, in good condition; that the defendant in violation of its duty to the plaintiff to safely transport said cows to Phoenix, Arizona, and to deliver them to the plaintiff at Phoenix, Arizona in good condition handled and transported said cows in such grossly negligent and careless manner as hereinafter set forth, that five of said cows died as

*Page-number appearing at foot of page of original certified Record.

a result thereof, at Yuma, Arizona, a station on the line of said Southern Pacific Company, and the remainder thereof, to wit: One hundred forty-seven (147) head of said cows were delivered to the plaintiff at Phoenix, Arizona, in such crippled, sick and injured condition, that six more of said cows died within a few days after said delivery, and eighty-seven (87) head thereof were seriously injured and depreciated in value, as *as* the direct result of the grossly negligent handling and transportation of said cows, as hereinafter particularly set forth. [4]

IV.

That the plaintiff accompanied said shipment of cattle from San Luis Obispo, California to Yuma, Arizona, a station on the line of the defendant company; that said shipment arrived at Yuma, Arizona, at ten o'clock A. M. on the 4th day of July, 1913, said cows being at the time of their arrival in Yuma, Arizona, in perfect physical condition; that upon their arrival at Yuma, the defendant by its agent at said station requested this plaintiff to unload said cows at said station; that the weather at Yuma, Arizona at said time was extremely hot, and the stockpens in which said cows were to be placed were very dusty and entirely unprotected from the rays of the sun, all of which facts were well known to said agent of this defendant; that this plaintiff in response to said request, advised said agent that through one A. R. Gatter, an agent and representative of the defendant company at Phoenix, Arizona, he had arranged to meet the train upon which said cows were

being transported over the lines of the defendant company, at Maricopa, Arizona, a station on the line of the defendant company, with a train upon which said cows were to be transferred and immediately transported to Phoenix, Arizona; and the plaintiff further warned the agent of the defendant company at Yuma, that to unload said cows at said station and to place the same in the company's stock-pens under the conditions above set forth, would result in serious injury and possible death of said cattle, to the damage of the plaintiff. The plaintiff further advised said agent of the then good condition of said cattle, and that by permitting them to be transported through to Maricopa, Arizona, on the train to which said cattle were attached, would protect them from the rays of the sun and the extreme heat to which they would be exposed at the station of Yuma, and would permit of their unloading at Phoenix, Arizona, during the evening of the said [5] 4th day of July, and would in every way protect them from exposure and injury; that the train on which said cattle had been transported to Yuma, arrived at Maricopa at 7:15 P. M. of said 4th day of July, and an engine and crew were waiting at said station of Maricopa in conformity with the arrangements made through said Gatter to transfer said cattle from there to Phoenix, and had the instructions and requests of the plaintiff herein been obeyed, said cattle would have arrived at Phoenix, at an hour not later than 10:00 P. M. of said 4th day of July, 1913, and would by such arrangement have been completely protected from the heat of the sun,

and would have been delivered to the plaintiff at Phoenix, Arizona, at such hour as to avoid their exposure to the heat of the sun; that notwithstanding plaintiff's request and the reasons expressed therefor, the said agent of the defendant company at Yuma, again demanded of the plaintiff that the said cows be then and there unloaded; that the plaintiff thereupon refused to unload his said cows at said place for the reasons aforesaid, and again warned said agent of the injury that would result to them from his proposed action, and that his company would be held strictly responsible for all damage and loss resulting therefrom to the plaintiff; that notwithstanding said warning from the plaintiff of the injury and loss that would result to the plaintiff, and the plaintiff's refusal to unload or assist in unloading said cows, said defendant, through its agent and employees, unloaded said cows and placed them in the stock-pens of the defendant, under the conditions above set forth; that said cows remained in said pens, exposed to the extreme heat and dust as above set forth, from 11:00 A. M. on the 4th day of July, 1914, until about 7:00 P. M. of said day. That as a direct result thereof, five of said cows [6] died at Yuma, on said 4th day of July, and all the remainder thereof as the result of said unloading and handling as above set forth, were so injured that six head thereof died shortly after this delivery to the plaintiff at Phoenix, Arizona, and eighty-seven (87) head thereof by reasons of the injuries so received, and as the direct result of said negligent conduct on the part of the defendant company as afore-

said, were overheated, rendered sick and lame, and greatly reduced in value; that said cows so injured and killed were all of the reasonable market value of Eighty-five Dollars (\$85) per head; that by reason of the death of the eleven cows as aforesaid, plaintiff has been damaged in the sum of Nine Hundred and Thirty-five Dollars (\$935), and by reason of the injuries to said 87 cows as aforesaid, their market value was depreciated \$20 per head, resulting in direct loss and damage to the plaintiff in the sum of Seventeen Hundred and Forty Dollars (\$1,740); that the plaintiff incurred expenses and outlay for the nursing of said cows in the sum of \$20.

V.

That after said injuries and prior to the institution of this action, and as soon as the plaintiff was able to determine the extent of his injury and damage, the plaintiff made demand upon the defendant company for the sum of Two Thousand Six Hundred Ninety-five Dollars (\$2,695) in full satisfaction of the damage and injury to the plaintiff, by reason of the negligence of the said defendant company as above set forth, which said demand was refused.

WHEREFORE, plaintiff prays judgment against the defendant;

1. For the sum of Two Thousand Six Hundred and Ninety-five Dollars (\$2,695) as compensatory damages for his loss as above set forth. [7]

2. For the sum of One Thousand Dollars (\$1,000) as punitive or exemplary damages.

3. For his costs herein incurred.

HAYES & LANEY,
Attorneys for Plaintiff.

[Endorsed]: No. 8603. Filed Jul. 2, 1915.
James Miller, Jr., Clerk Superior Court.

[Endorsements]: Filed Jul. 23, 1915 at — M.
George W. Lewis, Clerk. By Aileen Russell, Dep-
uty. [8]

[Summons.]

*In the Superior Court of the County of Maricopa,
State of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Action brought in the Superior Court of the County
of Maricopa, State of Arizona, and the Com-
plaint filed in said County of Maricopa in the
Office of the Clerk of said Superior Court.

In the Name of the State of Arizona, to Southern
Pacific Company, a Corporation, Defendant,
GREETING:

YOUR ARE HEREBY SUMMONED and re-
quired to appear in an action brought against you by
the above-named plaintiff in the Superior Court of
the county of Maricopa, State of Arizona, and an-
swer the Complaint therein filed with the clerk of
this said court, at Phoenix, in said county, within

twenty days after the service upon you of this Summons, if served in this said county, or in all other cases within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the Superior *County* of the county of Maricopa, State of Arizona, this second day of July, 1915.

[Seal]

JAMES MILLER, Jr.,

Clerk of said Superior Court.

Office of the Sheriff,
County of Maricopa,—ss.

I HEREBY CERTIFY that I received the within summons on the second day of July, A. D. 1915, at the hour of 5 P. M., and personally served the same on the third day of July, A. D. 1915, on [9] Southern Pacific Company, a Corporation being the defendant named in said Summons, by delivering to R. A. *Gstter*, General Agent for said Southern Pacific Company, a corporation, in the county of Maricopa, a copy of said Summons, to which was attached a true copy of the Complaint mentioned in said Summons.

Dated this third day of July, A. D. 1915.

J. D. ADAMS,

Sheriff.

By J. T. Murphy,

Deputy Sheriff.

Fees, Service	\$
Copies	\$1.00
Travel 1 miles,.....	\$.20
Publication	\$—
Total.....	\$1.20

[Endorsed]: No. 8603. Filed July 6, 1915.
James Miller, Jr., Clerk. By Jennie Smith, Deputy
Clerk.

[Endorsements]: Filed July 23, 1915, at — M.
George W. Lewis, Clerk. Aileen Russell, Deputy.
[10]

[Order Continuing Hearing on Demurrer.]

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of Monday,
September 20, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

IT IS ORDERED by the Court that the hearing
on the demurrer herein be postponed until Monday,
the 4th day of October, A. D. 1915, at Phoenix, Ari-
zona, in pursuance of stipulation of counsel. [11]

[Order of Submission of Demurrer.]

*In the United States District Court for the District
of Arizona.*

Minute Entries Appearing Under Date of October
5th, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

The hearing on the plaintiff's demurrers to the defendant's pleas in bar came on regularly this day, the plaintiff appearing by P. H. Hayes, Esquire, and the defendant appearing by F. H. Hartman, Esquire, and J. C. Forest, Esquire, and the said demurrers are argued by counsel and submitted to the Court for decision thereon and the Court takes the same under advisement.

[Order Assigning Cause for Hearing.]

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

With the consent of counsel for both sides, IT IS
ORDERED that this case be set down for trial on

October 15, 1915, at 9:30 o'clock, A. M., subject to the ruling of the Court on the demurrers of the plaintiff to the defendant's pleas in bar, this day argued and submitted to the Court and not yet decided. [12]

[Order Sustaining Demurrer to First and Second Pleas, etc.]

In the United States District Court for the District of Arizona.

Minute Entry Appearing Under Date of October 9th,
1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

The demurrers of the plaintiff to the defendant's pleas in bar having been argued by counsel and submitted to the Court on a former day of this term and the Court having maturely considered the same,

IT IS ORDERED that the said demurrers to the first and second pleas in bar of the defendant be and the same are hereby sustained, to which ruling of the Court the defendant excepts and asks that its exception be noted upon the record and the same is accordingly done. [13]

**[Order Permitting Filing of Defendant's Amended
Answer, etc.]**

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October 11,
1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PAC. CO.,

Defendant.

Upon motion of the defendant by counsel, IT IS ORDERED that the defendant be permitted to file its amended answer herein, and the said amended answer having been filed together with pleas in bar to the plaintiff's complaint, IT IS ORDERED, on application of plaintiff, that the plaintiff be permitted to file his demurrer and answer to the said pleas in bar and that the said demurrers be set down for argument on October 12, 1915, at two o'clock P. M.
[14]

*In the United States District Court for the District
of Arizona.*

No. 142 (PHX.)

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Defendant's Second Amended Pleas and Answer.

Now comes the above-named defendant, Southern Pacific Company, and files this, its second amended pleas and answer and says:

FIRST PLEA IN BAR.

That defendant is now and was during all of the times mentioned in plaintiff's complaint herein a common carrier by railroad, engaged in interstate commerce and operating a line of railroad extending through the States of California and Arizona, and other States.

That heretofore, on or about July 1, 1913, this defendant, in its capacity as such common carrier, received from plaintiff at the said town of San Luis Obispo, in the State of California, those certain 152 head of cows, being the same animals as mentioned and described in plaintiff's complaint herein, for transportation over its said line of railroad and its connecting carrier, to wit, Arizona Eastern Railroad Company, from the said town of San Luis Obispo to the city of Phoenix, in the State of Arizona.

That in the course of such transportation, and on July 2, 1913, at 2:35 P. M., the said cattle were by this defendant unloaded for feed and rest at the city of Los Angeles, State of California, at a station on defendant's said line of railroad, [15] and thereafter, and without any unusual delay were again loaded into cars of this defendant, on July 3, 1913, at about 3:40 P. M., and forwarded from the city of Los Angeles, on said date, and were transported by this defendant in its said cars, on its said line of railroad, from the said city of Los Angeles, without any unusual delay and without any negligence whatever on the part of defendant, to the town of Yuma, in the State of Arizona, a station upon defendant's said line of railroad. That said cattle arrived at the said station of Yuma, in the State of Arizona, at about the hour of 10:35 A. M. of July 4, 1913.

That at the time said cattle so arrived at the said station of Yuma, in the said State of Arizona, they had been confined in said cars for about twenty *hour* without feed or rest, and that it was absolutely necessary for defendant to unload said cattle at the said town of Yuma for feed and rest, in order to comply with the provisions of that certain Act of Congress entitled "An Act to Prevent Cruelty to Animals While in Transit by Railroad or Other Means of Transportation from One State, Territory or the District of Columbia into or Through Another State, Territory or the District of Columbia," etc., approved June 29, 1906, 34 Stat. L., p. 607, 1909 Supp. Fed. Anntd. Stats., p. 43.

That defendant did so unload said cattle at the said

station of Yuma for feed and rest for the purpose of complying with the provisions of said Act of Congress; and that without violating said Act of Congress it was impossible for defendant to have transported said cattle any farther than said station of Yuma, before unloading same for feed and rest, in this, to wit, that if said cattle had not been so unloaded, but had been transported to destination, without unloading for feed and rest at Yuma, Arizona, it would have resulted in the cattle having been [16] confined in the said cars in excess of twenty-eight consecutive hours.

That plaintiff did not, nor did anyone for him, upon the arrival of said cattle at the said town of Yuma, Arizona, or at any other time or place, file with or tender to this defendant or any of its agents any written request, separate and apart from any printed bill of lading or other railroad form, extending the time which said animals could be confined from twenty-eight to thirty-six hours, as provided by said statute.

That defendant had at said time properly equipped stock-pens and stock corrals at a certain station on its said line of railroad known as Gila, Arizona, a distance of 123 miles easterly from the said town of Yuma and in the direction in which said cattle were being transported, but that neither this defendant nor its connecting carrier, the said Arizona Eastern Railroad Company had at said time any stock-pens or corrals at the station of Maricopa, Arizona, the point at which said cattle were to be delivered by this defendant to its said connecting carrier, said

Arizona Eastern Railroad Company, for transportation by said Arizona Eastern Railroad Company to destination, the said city of Phoenix, into which said cattle could have been unloaded for feed and rest.

That upon the arrival of said cattle at the said town of Yuma, Arizona, this defendant was willing and anxious and offered to transport said cattle for plaintiff on to the said station of Gila, upon its said line, there to be unloaded for feed and rest, but that plaintiff absolutely refused to permit *plaintiff* to do so.

That thereupon and immediately upon the arrival of said cattle at the said station of Yuma, Arizona, on July 4, 1913, at about 10:35 A. M., this defendant notified its said connecting [17] carrier, to wit, said Arizona Eastern Railroad Company, by telegraph, that said cattle were then at said town of Yuma, en route to Phoenix, Arizona, and requested information from the said Arizona Eastern Railroad Company if it could handle said cattle if this defendant should transport said cattle on to said station of Maricopa from the said town of Yuma without feed and rest, and the said Arizona Eastern Railroad Company notified, advised and informed this defendant that it could not so handle said cattle from the said station of Maricopa, Arizona, to the place of destination, to wit, Phoenix, Arizona, and that it, the said Arizona Eastern Railroad Company did not and would not have any facilities at the said station of Maricopa upon the arrival of said freight-train so containing said cattle, if the said cattle should be brought

to the said station of Maricopa without unloading for feed and rest, to enable it, the said Arizona Eastern Railroad Company to transport said cattle from the said station of Maricopa to destination at Phoenix, Arizona, within thirty-six hours from the time said cattle were so loaded at the said city of Los Angeles, State of California, as hereinbefore set forth; and that by reason of the foregoing facts it was necessary for this defendant, in order to comply with the said Act of Congress known as the Twenty-eight Hour Law, to unload said cattle at the said town of Yuma for feed and rest, even though plaintiff had filed with this defendant a written request, as proved by said act, extending the time which said animals could be confined from twenty-eight to thirty-six hours, which this defendant specifically denies.

That at the time of the arrival of said cattle at the said town of Yuma, on account of the extreme heat at that place and in the country through which they had been transported, they were in no condition to be kept in the cars any longer and [18] were in no condition to withstand further shipment without feed and rest.

That defendant, thereafter, and on the same day, to wit, July 4, 1913, reloaded said cattle into its said cars at the said station of Yuma and forwarded the same to destination over its said line of railroad and the line of its connecting carrier, to wit, the said Arizona Eastern Railroad Company, to the city of Phoenix, State of Arizona, without any unusual delay and without any negligence whatsoever on its part.

That by reason whereof plaintiff is not entitled to recover any damages from this defendant for the matters and things set forth in his said complaint.

WHEREFORE, defendant prays for judgment that plaintiff take nothing by his action herein and that defendant have judgment for its costs.

FRANCIS M. HARTMAN,

Tucson, Arizona,

J. C. FOREST,

Phoenix, Arizona,

Attorneys for Defendant. [19]

SECOND PLEA IN BAR.

And defendant, for another and further plea in bar, to that portion of plaintiff's complaint wherein he is seeking to recover damages for six head of said cattle, which plaintiff alleges died shortly after delivery at destination in the sum of eighty-five dollars per head, to wit, five hundred ten dollars; and for eighty-seven head which plaintiff alleges were damaged in the sum of twenty dollars each, to wit, seventeen hundred forty dollars; and for twenty dollars which plaintiff alleges he paid out for nursing said cattle, says:

That heretofore, on or about July 1, 1913, this defendant, as a common carrier, received from plaintiff at the town of San Luis Obispo, in the State of California, those certain 152 head of cows, as mentioned and described in plaintiff's complaint, for transportation, in five cars, to the city of Phoenix, in the State of Arizona, over the line of railroad operated by defendant and its connecting carriers, under three certain contracts in writing, then and

there made and entered into by and between plaintiff and his duly authorized agents, to wit, one Frank E. Whitten and one James Ford, and this defendant, which said contracts were identical in form and the contents of each were the same with the exception that one of said contracts was executed by the said Frank R. Stewart, in person and covered sixty head of said cattle, contained in two of said cars; one of said contracts was executed by the said Frank E. Whitten, the duly authorized agent of and for and on behalf of said Frank R. Stewart, the owner of said cattle, and covered sixty-two head of said cattle, contained in two of said cars; and the other of said contracts was executed by the said James Ford, the duly authorized agent of and for and on behalf of the said Frank R. Stewart, the owner of said cattle, and covered [20] thirty head of said cattle, contained in one of said cars; true and correct copies of which said contracts are attached hereto and made a part hereof, marked exhibits "A," "B" and "C," respectively.

That the original copies of each of said contracts were by this defendant, at the time and place of execution thereof, to wit, on July 1, 1913, at San Luis Obispo, California, delivered to plaintiff, and defendant is informed and believes and upon such information and belief alleges that plaintiff now has the same in his possession or control.

That the said Frank R. Stewart, although being the owner or claiming to be the owner of all of said cattle, shipped sixty-two head of said cattle in the name of said Frank E. Whitten and thirty head of

said cattle in the name of said James Ford.

That in transporting said shipment of cattle this defendant fully performed each and every act on its part required to be performed by the terms and provisions of said contracts and by the published freight tariffs governing such shipments, and if any loss or injury occurred to said livestock, as alleged in plaintiff's complaint, all of which this defendant expressly denies, this defendant is exempt from liability therefor under the terms and stipulations set forth in said agreements.

That under and by virtue of the terms of said contracts and each of them plaintiff herein agreed and bound himself that in case any loss or damage should be sustained for which this defendant might be liable that then this plaintiff should make demand or claim therefor in writing to the freight claim agent of this defendant within ten days after the unloading of said cattle at destination, to wit, at the city of Phoenix, State of Arizona, and that in the event of the failure of plaintiff [21] to do so all claims for loss or damage in the premises were thereby expressly waived, released and made void.

That said cattle were unloaded by plaintiff and received and taken and driven away by him on the 5th day of July, 1913, at destination, to wit, at the city of Phoenix, Arizona, and that plaintiff did not, nor did anyone for him or on his behalf, within ten days after so unloading said cattle at destination, make any demand or claim in writing to the freight claim agent of this defendant or to this defendant or to any agent of this defendant company for any

loss or damage to said shipment of cattle.

That it was entirely possible for plaintiff to have given such notice, and that this defendant at all the times mentioned in plaintiff's complaint had an agent at the said city of Phoenix, State of Arizona, at the place where said cattle were unloaded, as set forth in plaintiff's complaint, and that said defendant had at all of said times many agents in said State of Arizona, and in the State of California to whom such notice could have been given.

That by reason of the failure of plaintiff or anyone for him or on his behalf to make any claim in writing within ten days after the unloading of said cattle, to the freight claim agent of this defendant or to any agent of this defendant, as aforesaid, for any loss or damage to any of said cattle, that plaintiff thereby expressly waived and released any and all claims whatsoever against this defendant on account of any loss or damage to said cattle, if said cattle were damaged as alleged.

That by reason of the failure of plaintiff to give such notice in manner and form as required by said agreement that he is not entitled to recover in this action for the six [22] head of cattle alleged to have died shortly after delivery, nor for damages in the sum of twenty-dollars per head for eighty-seven head alleged to have been injured, nor for the said sum of twenty dollars alleged to have been paid out for nursing said cattle.

WHEREFORE, defendant prays that plaintiff take nothing by his action herein for said matters and things above set forth.

FRANCIS M. HARTMAN,

Tucson, Arizona,

J. C. FOREST,

Phoenix, Arizona,

? Attorneys for Defendant. [23]

ORIGINAL

SOUTHERN PACIFIC COMPANY
PACIFIC SYSTEM
LIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF LADING
SPECIAL AGREEMENT

Executed by _____
at _____ Station, Date _____ 191____
for _____ car _____ of _____ good for transportation of _____

Billing agent
stamp here.

From _____ to _____
when accompanying the stock herein described and not otherwise.
This Contract must be presented to Agent at _____ for renewal

RELEASE FOR MAN OR MEN IN CHARGE

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge other than the sum stipulated therein, for the carriage of the live stock mentioned therein, the undersigned in charge do hereby, voluntarily, assume all risk of accident or damage to his (or their) person or property, and do hereby release and discharge the said carrier or carriers from every and all claim, liability and demand of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers or any of its or their employees or otherwise.

Signature of man
(or men) in charge

(Agents will show men through spaces not used)

Witness

The man or men who may be entitled to return transportation free or at a reduced rate under carriers' rules in effect, published and posted as required by law, at time this contract was executed, will upon surrender of this contract to the carriers' agent, receive tickets or tickets for the return journey.

TIME OF LOADING

Rested at _____ 191____ Hour _____ m.
Date arrived _____ Hour _____ m.
Date dep't'r _____ Hour _____ m.

Name of Consignee

TIME OF ARRIVAL AT _____ (Destination)
_____ 191____ Hour _____ m.
in train _____

TIME OF UNLOADING

_____ 191____ Hour _____ m.
Agent _____

VALUATION

Ordinary Live Stock will be received for transportation under the form of contract appearing upon the other side of this paper, subject to the following additional conditions: Shipments of Live Stock moving between points in Oregon will be received for transportation under the conditions of the "Low Value Live Stock Contract" and "Special Value Live Stock Contract."—(Uniform Live Stock Contract prescribed by the Railroad Commission of Oregon.) Rates as shown in the tariffs of this Company apply only on Ordinary Live Stock, that is, the actual and declared value of which does not exceed:

Each Horse or Pony (Gelding, Mare or Stallion), Mule or Jack \$100.00
Each Colt (under 1 year) 50.00
Each Ox, Goat or sheep 50.00
Each Cow 30.00
Each Calf 10.00
Each "Hog" 25.00
Each Sheep or Goat 3.00
Range Cattle, each animal 30.00

Values in excess of the foregoing will be considered extraordinary, and such Extraordinary Live Stock will be received and forwarded by this Company only under the form of Contract above mentioned and subject to increased charges as compared with Ordinary Live Stock as follows:

When actual and declared value exceeds that of Ordinary Live Stock, as shown above, by

100 per cent or less, increase the charge on each 10 per cent
200 per cent or less, increase the charge on each 20 per cent
300 per cent or less, increase the charge on each 30 per cent
400 per cent or less, increase the charge on each 40 per cent
500 per cent or less, increase the charge on each 50 per cent
600 per cent or less, increase the charge on each 60 per cent
700 per cent or less, increase the charge on each 70 per cent
800 per cent or less, increase the charge on each 80 per cent
900 per cent or less, increase the charge on each 90 per cent
1000 per cent or less, increase the charge on each 100 per cent

Charge on animals of greater value in like proportion, but in no case will greater charge be made for other animals than for a horse of same valuation.

INSTRUCTIONS

Shippers or their agents must acquaint themselves with the rules and regulations governing the transportation of Live Stock as per G. F. D. Circular 188-E, supplements thereto and releases thereof, and known as "Rules and regulations Governing the Transportation of Live Stock," and the terms of said form of contract above mentioned.

ATTENDANTS

Attendants accompanying Live Stock to destination and returning under conditions and rules of this Contract and Bill of Lading, also Circular G. F. D. No. 188-E, supplements thereto and releases thereof, will be cared for as follows:

With 1 carload of Live Stock 1 man may accompany free, but not return free

With 2 to 5 carloads 1 man may accompany and return free
With 6 to 10 carloads 2 men may accompany and return free
With 11 or more carloads 3 men may accompany and return free

When more than one carload of stock is shipped account of one owner from different stations to one destination, on same train, man or men may accompany as per above, and will be entitled to return free as follows:

One man to the station where the second car was placed in train.
One additional man to the station where the sixth car was placed in train.

One additional man to the station where the eleventh car was placed in train.

Transportation will be furnished to persons in charge of sheep, Hogs, Goats and Calves in DOUBLE-DECK CARS on BASIS OF TWO SINGLE-DECK CARS as equivalent to one double-deck.

RECEIPT

FOR THE

RETURN TRANSPORTATION**FURNISHES ORIGINAL OR SUBSTITUTED LIVE STOCK ATTENDANTS**

Received Ticket, Form _____ No. _____ Date _____
Slim ☐ Light Eyes ☐
Medium ☐ Dark Eyes ☐
Short ☐ Light Hair ☐
Short ☐ Dark Hair ☐
Medium ☐ Gray Hair ☐
Young ☐ Mustache ☐
Middle-Aged ☐ Chin Bearded ☐
Elderly ☐ Side Bearded ☐
No Beard ☐

1. _____ To _____
Signature _____

Slim ☐ Light Eyes ☐
Medium ☐ Dark Eyes ☐
Short ☐ Light Hair ☐
Short ☐ Dark Hair ☐
Medium ☐ Gray Hair ☐
Young ☐ Mustache ☐
Middle-Aged ☐ Chin Bearded ☐
Elderly ☐ Side Bearded ☐
No Beard ☐

Non-Received Ticket, Form _____ No. _____ Date _____

2. _____ To _____
Signature _____

Received Ticket, Form _____ No. _____ Date _____

3. _____ To _____
Signature _____

SUBSTITUTED ATTENDANT

Received Ticket, Form _____ No. _____ Date _____
Slim ☐ Light Eyes ☐
Medium ☐ Dark Eyes ☐
Short ☐ Light Hair ☐
Short ☐ Dark Hair ☐
Medium ☐ Gray Hair ☐
Young ☐ Mustache ☐
Middle-Aged ☐ Chin Bearded ☐
Elderly ☐ Side Bearded ☐
No Beard ☐

_____ To _____
Signature _____

SUBSTITUTED ATTENDANT

In case it becomes necessary for one of the persons in charge to leave train en route, substituting another in his place, such substitution must be made in presence of the Agent at station at which it occurs, who will cancel original signature and description and see that those of the substitute are properly affixed.

Slim ☐ Light Eyes ☐
Medium ☐ Dark Eyes ☐
Short ☐ Light Hair ☐
Short ☐ Dark Hair ☐
Medium ☐ Gray Hair ☐
Young ☐ Mustache ☐
Middle-Aged ☐ Chin Bearded ☐
Elderly ☐ Side Bearded ☐
No Beard ☐

At _____ Substitutes _____
Agent _____

ORIGINAL

SOUTHERN PACIFIC COMPANY
PACIFIC SYSTEM

LIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF LADING
SPECIAL AGREEMENT

INSTRUCTIONS

Shippers or their agents must acquaint themselves with the rules and regulations governing the transportation of Live Stock as per C. F. D. Circular 188-E, supplements thereto and releases thereof, and known as "Rules and Regulations Governing the Transportation of Live Stock," and the terms of said form of contract above mentioned.

ATTENDANTS

It is expressly understood and agreed that if Southern Pacific Company shall accept the shipment of live stock covered by this contract, unaccompanied by person to take care of such shipment, Southern Pacific Company is hereby released from all liability as to damage to or loss of said live stock, when running in whole, or in part, from lack of care or attention of an attendant while in transit.

Attendants accompanying Live Stock to destination and returning under conditions and rules of this Contract and Bill of Lading, also Circular G. F. D. No. 188-E, supplements thereto and releases thereof, will be cared for as follows:

With 1 carload of Live Stock 1 man may accompany free, but not return free.
With 2 to 5 carloads.....1 man may accompany and return free
With 6 to 10 carloads.....2 men may accompany and return free
With 11 or more carloads.....3 men may accompany and return free
When more than one carload of stock is shipped account of one owner from different stations to one destination, on same train, man or men may accompany as per above, and will be entitled to return free as follows:

One man to the station where the second car was placed in train.
One additional man to the station where the sixth car was placed in train.
One additional man to the station where the eleventh car was placed in train.

Transportation will be furnished to persons in charge of Sheep, Hogs, Goats and Cattle in DOUBLE-DECK CARS ON BASIS OF TWO SINGLE-DECK CARS as equivalent to one double-deck.

RETURN TRANSPORTATION

The man or men who may be entitled to return transportation free or at a reduced rate under the rules in effect, submitted by the Live Stock Commission, at the time this contract was executed, will upon surrender of this contract to the carrier's agent, receive ticket or tickets for the return journey.

Return transportation of attendants in charge of Live Stock will not be honored unless the contract for return passage is presented within seven (7) days after arrival of Live Stock at destination; but on shipments of Horses, return transportation for attendants in charge of same will be honored if contract is presented within fifteen (15) days after arrival of Horses at destination; except that upon shipments originating at or destined to points beyond this Company's eastern terminals, namely, Portland, Ore., Ogden, Utah, and Rio Grande, N. M., return passage will be limited as follows:

When destined beyond this Company's Eastern Terminals, namely Portland, Ore., Ogden, Utah, and Rio Grande, N. M., return transportation will be furnished within 90 days after Live Stock passes said terminals. When originating at points beyond this Company's Eastern Terminals and destined to points west of said terminals, return transportation will be furnished within 30 days after arrival of Live Stock at destination.

When destined to points on connecting lines south of Portland, Ore., west of Ogden, Utah, and Rio Grande, N. M., return transportation will be furnished Carriers entitled to such transportation, if contract is presented within fifteen (15) days after Live Stock passes junction point with connecting line.

VALUATION

Ordinary Live Stock will be received for transportation under the form of contract appearing upon the other side of this paper, subject to the following additional conditions: Shipments of Live Stock moving between points in Oregon will be received for transportation under the conditions of the "Low Value Live Stock Contract" and "Special Value Live Stock Contract."—(Uniform Live Stock Contract prescribed by the Railroad Commission of Oregon.) Rates as shown in the tariffs of this Company apply only on Ordinary Live Stock, that is, the actual and declared value of which does not exceed:

Each Horse (except Range Horses) or Pony (Gelding, Mare or Stallion), Mule or Jack.....\$100.00

Each Ox, Bull or Steer.....50.00

Each Cow.....30.00

Each Goat.....15.00

Each Pig.....10.00

Each Sheep or Lamb.....5.00

Range Cattle, each animal.....30.00

Range Horses, each animal.....50.00

Values in excess of the foregoing will be considered extraordinary, and such Extraordinary Live Stock will be received and forwarded by this Company only under the form of Contract above mentioned and subject to increased charges as compared with Ordinary Live Stock, as follows:

When the actual and declared value exceeds that of Ordinary Live Stock, as shown above, the charges will be increased 10 per cent for each 100 per cent or fraction thereof increase in valuation.

Charge on animals of greater value in like proportion, but in no case will greater charge be made for other animals than for a horse of same valuation.

TIME OF LOADING

.....191..... Hour.....m.

Rested at..... Hour.....m.

Date arrived..... Hour.....m.

Date dep't..... Hour.....m.

Name of Consignee.....

.....191..... Hour.....m.

.....191..... Hour.....m.

TIME OF UNLOADING

.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

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.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

.....191..... Hour.....m.

RELEASE FOR MAN OR MEN IN CHARGE

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge other than that stipulated therein, for the carriage of the live stock mentioned therein, the undersigned in charge do hereby, voluntarily, assume all risk of accident or damage to his (or their) person or property, and do hereby release and discharge the said carrier or carriers from every and all claim, liability and demand of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned as in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers or any of its or their employees or otherwise.

SIGNATURE OF MAN OR MEN IN CHARGE	NO. MEN IN CHARGE	NO. CARS SHIPPED
One Man Only	1	①
		②
		③
		④
		⑤
Two Men Only	2	⑥
		⑦
		⑧
		⑨
		⑩
Three Men Only	3	⑪
		Or More

Agents will punch No. and description of men in charge, No. of cars shipped, witness signatures and cancel unused spaces above.

RECEIPT FOR THE RETURN TRANSPORTATION
FURNISHED ORIGINAL OR SUBSTITUTED LIVE STOCK ATTENDANTS

Received Ticket, Form.....No.....Date.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
1 From.....To.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Signature.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Received Ticket, Form.....No.....Date.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
2 From.....To.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Signature.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Received Ticket, Form.....No.....Date.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
3 From.....To.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Signature.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>

SUBSTITUTED ATTENDANT

In case it becomes necessary for one of the persons in charge to leave train en route, substituting another in his place, such substitution must be made in presence of the Agent at station at which it occurs, who will cancel original signature and description and see that those of the substitute are properly affixed.

Substitutes	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
At.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
.....Agent	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>

Received Ticket, Form.....No.....Date.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
From.....To.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>
Signature.....	Slim <input type="checkbox"/> Young <input type="checkbox"/>	Medium <input type="checkbox"/> Middle Age <input type="checkbox"/>	Short <input type="checkbox"/> Elderly <input type="checkbox"/>

Billing agent stamp here

From.....to.....
when accompanying the stock herein described and not otherwise.
This Contract must be presented to Agent at.....for renewal

ORIGINAL

SOUTHERN PACIFIC COMPANY
PACIFIC SYSTEMLIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF LADING
SPECIAL AGREEMENT

INSTRUCTIONS

Shippers or their agents must acquaint themselves with the rules and regulations governing the transportation of Live Stock as per G. F. D. Circular 188-E, supplements thereto and releases thereof, and known as "Rules and Regulations Governing the Transportation of Live Stock," and the terms of said form of contract above mentioned.

ATTENDANTS

It is expressly understood and agreed that if Southern Pacific Company shall accept the shipment of live stock covered by this contract, unaccompanied by person to take care of such shipment, Southern Pacific Company is hereby released from all liability as to damage to or loss of said live stock, when resulting in whole, or in part, from lack of care or attention while in transit.

Attendants accompanying Live Stock to destination and returning under conditions and rules of this Contract and Bill of Lading, also Circular G. F. D. No. 188-E, supplements thereto and releases thereof, will be cared for as follows:

With 1 carload of Live Stock 1 man may accompany free, but not return free.
With 2 to 5 carloads.....1 man may accompany and return free
With 6 to 10 carloads.....2 men may accompany and return free
With 11 or more carloads.....3 men may accompany and return free
When more than one carload of stock is shipped account of one owner from different stations to one destination, on same train, man or men may accompany as per above, and will be entitled to return free as follows:

One man to the station where the second car was placed in train.
One additional man to the station where the sixth car was placed in train.

One additional man to the station where the eleventh car was placed in train.

Transportation will be furnished to persons in charge of Sheep, Hogs, Goats and Calves in DOUBLE-DECK CARS ON BASIS OF TWO SINGLE-DECK CARS as equivalent to one double-deck.

RETURN TRANSPORTATION

The man or men who may be entitled to return transportation free or at a reduced rate under carriers' rules in effect, published and posted as required by law, at time this contract was executed, will upon surrender of this contract to the carriers' agent, receive ticket or tickets for the return journey.

Return transportation of attendants in charge of Live Stock will not be honored unless the contract for return passage is presented within seven (7) days after arrival of Live Stock at destination, but on shipments of Horses return transportation for attendants in charge of same will be honored if contract is presented within fifteen (15) days after arrival of Horses at destination; except that upon shipments originating at or destined to points beyond this Company's eastern terminals, namely, Portland, Ore., Ogden, Utah, and Rio Grande, N. M., return passage will be limited as follows:

When destined beyond this Company's Eastern Terminals, namely Portland, Ore., Ogden, Utah, and Rio Grande, N. M., return transportation will be furnished within 90 days after Live Stock passes acid terminals. When originating at points beyond this Company's Eastern Terminals and destined to points west of and terminals, return transportation will be furnished within 30 days after arrival of Live Stock at destination.

When destined to points on connecting line south of Portland, Ore., west of Ogden, Utah, and Rio Grande, N. M., return transportation will be furnished Carriers' entitled to such transportation, if contract is presented within fifteen (15) days after Live Stock passes junction point with connecting line.

VALUATION

Ordinary Live Stock will be received for transportation under the form of contract appearing upon the other side of this paper, subject to the following additional conditions: Shipments of Live Stock moving between points in Oregon will be received for transportation under the conditions of the "Low Value Live Stock Contract" and "Special Value Live Stock Contract."—(Uniform Live Stock Contract prescribed by the Railroad Commission of Oregon.) Rates as shown in the tariffs of this Company apply only on Ordinary Live Stock, that is, the actual and declared value of which does not exceed:

Each Horse (except Range Horses) or Pony (Celding, Mare or Stallion), Mule or Jack.....\$100.00
Each Colt (under 1 year).....\$75.00
Each Ox, Bull or Steer.....\$50.00
Each Cow.....\$25.00
Each Goat.....\$10.00
Each Hog.....\$10.00
Each Sheep or Goat.....\$7.50
Range Cattle, each animal.....\$20.00
Range Horses, each animal.....\$50.00

Values in excess of the foregoing will be considered extraordinary, and such Extraordinary Live Stock will be received and forwarded by this Company only under the form of Contract above mentioned and subject to increased charges as compared with Ordinary Live Stock, as follows:

When the actual and declared value exceeds that of Ordinary Live Stock, as shown above, the charges will be increased 10 per cent for each 100 per cent or fraction thereof increase in valuation.

Charge on animals of greater value in like proportion, but in no case will greater charge be made for other animals than for a horse of same valuation.

TIME OF LOADING

.....191..... Hour.....m.

Rated at..... Hour.....m.

Date arrived..... Hour.....m.

Date dep't..... Hour.....m.

Name of Consignor.....

..... Hour.....m.

..... Hour.....m.

..... Hour.....m.

TIME OF UNLOADING

.....191..... Hour.....m.

..... Agent

Executed by.....

at..... Station, Date.....191.....

for.....car.....of.....good for transportation of.....

Billing agent
stamp here.

From.....to.....

when accompanying the stock herein described and not otherwise.

This Contract must be presented to Agent at.....for renewal

RELEASE FOR MAN OR MEN IN CHARGE

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge other than the amount stipulated therein, for the carriage of the live stock mentioned therein, the undersigned in charge do hereby, voluntarily, assume all risk of accident or damage to his (or their) person or property, and do hereby release and discharge the said carrier or carriers from every and all claim, liability and demand of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers or any of its or their employees or otherwise.

SIGNATURE OF MAN OR MEN IN CHARGE		NO. MEN IN CHARGE	NO. CARS SHIPPED
One Man Only		1	①
		1	②
		1	③
		1	④
		1	⑤
Two Men Only		2	⑥
		2	⑦
		2	⑧
Three Men Only		3	⑨
		3	⑩
Or More			

Agents will punch No. and description of men in charge, No. of cars shipped, witness signatures and cancel unused spaces above.

RECEIPT FOR THE RETURN TRANSPORTATION
FURNISHED ORIGINAL OR SUBSTITUTED LIVE STOCK ATTENDANTS

Received Ticket, Form.....No.....Date.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
1 From.....To.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Signature.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Received Ticket, Form.....No.....Date.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
2 From.....To.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Signature.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Received Ticket, Form.....No.....Date.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
3 From.....To.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Signature.....	Slit.....Young.....Q	Medium.....Middle Age.....Q

SUBSTITUTED ATTENDANT

In case it becomes necessary for one of the persons in charge to leave train on route, substituting another in his place, such substitution must be made in presence of the Agent at station at which it occurs, who will cancel original signature and description and see that those of the substitute are properly affixed.

.....Substitutes.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
At.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
.....Agent.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Received Ticket, Form.....No.....Date.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
From.....To.....	Slit.....Young.....Q	Medium.....Middle Age.....Q
Signature.....	Slit.....Young.....Q	Medium.....Middle Age.....Q

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Ozden, Utah, and Rio Grande, N. M., return transportation will be furnished (operators entitled to such transportation, if carrier is presented within fifteen (15) days after live stock passes junction point with connecting line.

Answer.

And not waiving its foregoing pleas, and for answer to plaintiff's complaint on file herein, defendant says:

I.

Admits that plaintiff is a resident of Maricopa County, Arizona, and alleges that the said plaintiff is now and was at the time of the commencement of this action and ever since has been a resident and citizen of the State of Arizona.

Admits that defendant is a corporation, and alleges that defendant is now, and was at the time of the commencement of this action and ever since has been a corporation duly organized, created by and existing under and by virtue of the laws of the State of Kentucky. That it is now and was at the time of the commencement of said action and ever since has been a nonresident of the State of Arizona, and is not now and was not at the time of the commencement of this action and never has been a citizen of the said State of Arizona.

Admits that it is now and was during the time mentioned in said complaint a common carrier engaged in the transportation of freight for hire.

II.

That heretofore, on or about July 1, 1913, this defendant, in its capacity as such common carrier, received from plaintiff at the town of San Luis Obispo, in the State of California, those certain 152 head of cows, more or less, being the same animals as men-

tioned and described in plaintiff's complaint herein, for transportation over its said line of railroad and its connecting carrier, to wit, the Arizona Eastern Railroad Company, from the said town of San Luis Obispo to the city of Phoenix, in the State of Arizona. [30]

That in the course of such transportation and on July 2, 1913, at 2:35 P. M., the said cattle were by this defendant unloaded for feed and rest at the city of Los Angeles, State of California, a station on defendant's line of railroad, and thereafter, and without any unusual delay were again loaded into cars of this defendant, on July 3, 1913, at about 3:40 P. M., and were forwarded and transported by this defendant in its said cars, on its said line of railroad, from the said city of Los Angeles, without any unusual delay and without any negligence whatever on the part of defendant, to the town of Yuma, in the State of Arizona, a station on defendant's said line of railroad. That the cattle arrived at the said station of Yuma, in the State of Arizona, at about the hour of 10:35 A. M. of July 4, 1913.

That at the time said cattle so arrived at the said station of Yuma, in the State of Arizona, they had been confined in said cars for about twenty hours without feed or rest, and that it was absolutely necessary for defendant to unload said cattle at the said town of Yuma for feed and rest, in order to comply with the provisions of that certain Act of Congress entitled "An Act to Prevent Cruelty to Animals in Transit by Railroad or Other Means of Transportation From One State, Territory or the District of

Columbia into or Through Another State, Territory or the District of Columbia," etc., approved June 29, 1906, 34 Stat. L., p. 607; 1909 Supp. Fed. Stats. Anntd., p. 43.

That the defendant did so unload said cattle at the said station of Yuma for feed and rest for the purpose of complying with the provisions of said Act of Congress; and that without violating said Act of Congress it was impossible for defendant to have transported said cattle any farther than said station of Yuma, before unloading them for feed and rest, in this, to wit, that if said cattle had not been so unloaded, but had [31] been transported at destination, without unloading for feed and rest at Yuma, it would have resulted in the cattle having been confined in the cars without feed or rest for a period of time in excess of twenty-eight consecutive hours.

That the plaintiff did not, nor did anyone for him, upon the arrival of said cattle at the said town of Yuma, Arizona, or at any other time or place, file with or tender to this defendant or to any of its agents any written request, separate and apart from any printed bill of lading or other railroad form, extending the time which said animals could be confined from twenty-eight to thirty-six hours, as provided by said statute.

That defendant had at said time properly equipped stock-pens and stock corrals at a certain station on its said line or railroad known as Gila, Arizona, a distance of 123 miles easterly from the said town of Yuma and in the direction in which said cattle were being transported, but that neither this defendant

nor its said connecting carrier, the said Arizona Eastern Railroad Company, had at said time any stockpens or corrals at the station of Maricopa, Arizona, the point at which said cattle were to be delivered by this defendant to its said connecting carrier, said Arizona Eastern Railroad Company, for transportation by said Arizona Eastern Railroad Company to destination, the said city of Phoenix, into which said cattle could have been unloaded for feed and rest.

That upon the arrival of said cattle at the said town of Yuma, Arizona, this defendant was willing and anxious and offered to transport said cattle for plaintiff on to the said station of Gila, upon its said line, there to be unloaded for feed and rest, but that plaintiff absolutely refused to permit defendant to do so.

That thereupon and immediately upon the arrival of said [32] cattle at said station of Yuma, Arizona, on July 4, 1913, at about 10:35 A. M., this defendant notified its said connecting carrier, to wit, said Arizona Eastern Railroad Company, by telegraph, that said cattle were then at said town of Yuma, en route to Phoenix, Arizona, and requested information from the said Arizona Eastern Railroad Company if it could handle said cattle if this defendant should transport said cattle on to said station of Maricopa from the said town of Yuma without feed or rest, and the said Arizona Eastern Railroad Company notified, advised and informed this defendant that it could not so handle said cattle from the said station of Maricopa, Arizona, to the place of destination, to wit, Phoenix, Arizona, and that it,

the said Arizona Eastern Railroad Company, did not and would not have any facilities at the said station of Maricopa, upon the arrival of said freight-train so containing said cattle, if the said cattle should be brought to the said station of Maricopa without unloading for feed and rest, to enable it, the said Arizona Eastern Railroad Company to transport said cattle from the said station of Maricopa to destination at Phoenix, Arizona, within thirty-six hours from the time said cattle were so loaded at the said city of Los Angeles, State of California, as hereinbefore set forth; and that by reason of the foregoing facts it was necessary for this defendant, in order to comply with the said Act of Congress known as the twenty-eight hour law, to unload said cattle at the said town of Yuma for feed and rest, even though plaintiff had filed with this defendant a written request, as provided by said Act, extending the time which said animals could be confined from twenty-eight to thirty-six hours, which this defendant specifically denies.

That at the time of the arrival of said cattle at the said town of Yuma, on account of the extreme heat at that place [33] and of the country through which they had been transported, they were in no condition to be kept in the cars any longer and were in no condition to withstand any further shipment without feed and rest.

That defendant thereafter, and on the same day, to wit, July 4, 1913, reloaded said cattle into its said cars at the said station of Yuma and forwarded the same to destination over its said line of railroad and

the line of its connecting carrier, to wit, the Arizona Eastern Railroad, to the city of Phoenix, State of Arizona, without any unusual delay and without any negligence whatsoever on its part.

That by reason thereof plaintiff is not entitled to recover any damages from this defendant for the matters and things set forth in his said complaint.

III.

Defendant alleges that heretofore, on or about July 1, this defendant, as a common carrier, received from plaintiff, at the town of San Luis Obispo, in the State of California, those certain 152 head of cows, as mentioned and described in plaintiff's complaint, for transportation in five cars to the city of Phoenix, in the State of Arizona, over the line of railroad operated by this defendant and its connecting carriers, under three certain contracts in writing, then and there made and entered into by and between plaintiff and his duly authorized agents, to wit, one Frank E. Whitten and one James Ford, and this defendant, which said contracts were identical in form and the contents of each were the same with the exception that one of said contracts was executed by the said Frank R. Stewart in person, and covered sixty head of said cattle contained in two of said cars; one of said contracts was executed by the said Frank E. Whitten, the duly authorized agent of and [34] *and* for and on behalf of said Frank R. Stewart, the owner of said cattle, and covered sixty-two head of said cattle; contained in two of said cars; and the other of said contracts was executed by the said James Ford, the duly authorized

agent of and for and on behalf of the said Frank R. Stewart, the owner of said cattle, and covered thirty head of said cattle contained in one of said cars, true and correct copies of which said contracts are annexed to defendant's second plea in bar herein, and being the same contracts referred to in said plea in bar, and are now here made a part of this answer as though the same were again set forth *in haec verba*.

That in transporting said shipment of cattle this defendant and its connecting carrier fully performed each and every act upon their part required to be performed by the terms and provisions of said contracts and by the published freight tariffs governing such shipments, and if any loss or injury occurred to said livestock, as alleged in plaintiff's complaint, all of which this defendant expressly denies, this defendant is exempt from liability therefor under the terms and stipulations set forth in said agreements.

That under and by virtue of the terms of said contracts and each of them plaintiff herein agreed and bound himself that in case any loss or damage should be sustained for which this defendant might be liable that then this plaintiff should make demand or claim therefor in writing to the freight claim agent of this defendant within ten days after the unloading of said cattle at destination, to wit, at the city of Phoenix, State of Arizona, and that in the event of the failure of plaintiff so to do all claims for loss or damage in the premises were thereby expressly waived, released and made void.

That said cattle were unloaded by plaintiff and

received [35] and taken and driven away by him on the 5th day of July, 1913, at destination, to wit, at the city of Phoenix, Arizona, and that plaintiff did not, nor did anyone for him or on his behalf, within ten days after so unloading said cattle at said destination, make any demand or claim in writing to the freight claim agent of this defendant or to this defendant or to any agent of this defendant company for any loss or damage to said shipment of cattle.

That it was entirely possible for plaintiff to have given such notice, and that this defendant at all the times mentioned in plaintiff's complaint had an agent at the said city of Phoenix, State of Arizona, at the place where said cattle were unloaded, as set forth in plaintiff's complaint, and that defendant had at all of said times many agents in the State of Arizona, and in the State of California, to whom such notice could have been given.

That by reason of the failure of plaintiff or anyone for him or on his behalf to make any claim in writing within ten days after the unloading of said cattle to the freight claim agent of this defendant or to any agent of this defendant, as aforesaid, for any loss or damage to any of said cattle that plaintiff thereby expressly waived and released any and all claims whatsoever on account of any loss or damage to said cattle, if said cattle were damaged as alleged, against this defendant.

That by reason of the failure of plaintiff to give such notice in manner and form as required by said agreement that he is not entitled to recover on his

said alleged claim and should not be permitted to maintain this action.

IV.

That heretofore, on or about July 1, 1913, this defendant, as a common carrier, received from plaintiff at the town of [36] San Luis Obispo, in the State of California, those certain 152 head of cows as mentioned and described in plaintiff's complaint, for transportation, in five cars, to the city of Phoenix, in the State of Arizona, over the lines of railroad operated by this defendant and its connecting carrier, to wit, the Arizona Eastern Railroad Company, under those certain contracts in writing above referred to.

That said contracts and each of them were fairly made and entered into between plaintiff and his duly authorized agents and this defendant and that by reason of the execution thereof and in consideration of the same plaintiff obtained a lower published freight tariff rate for said shipment that would have been otherwise assessed thereon and therefor, and that the difference between said freight rate so assessed on said shipment by reason of the execution of said contracts and the higher published tariff rate which would have been applicable thereto had said contracts not been entered into is reasonable and in proportion to the liability of the defendant under the stipulation contained in said contracts.

That in transporting said shipment of cattle this defendant and its said connecting carrier fully performed each and every act upon their part required to be performed by the terms and provisions of said

contracts and the published tariffs governing such shipments.

That under and by virtue of the terms of said contracts so made and entered into by and between plaintiff and his duly authorized agents and this defendant as hereinbefore set forth the plaintiff then and there stipulated that the agreed valuation of said livestock, as stated in said contracts, was the sum of thirty dollars per head.

That said agreed valuation was made and placed upon said [37] cattle by plaintiff for and in consideration of a cheaper and lower freight rate obtained on said shipment and that plaintiff then and there agreed that in any event there should be no recovery for loss or damage on said livestock in excess of said declared valuation of thirty dollars per head.

Wherefore, and by reason thereof, plaintiff is not entitled to recover in this action, in any event, anything over and above said sum of thirty dollars per head for any of said animals so alleged to have been lost or damaged.

V.

Defendant specifically denies that said animals were robust, healthy and in every way in first-class physical condition at the time said animals were delivered to it at San Luis Obispo, California, for transportation to Phoenix, Arizona; but alleges that at the time said animals were so delivered to this defendant at said place they were in a poor, weak and starved condition, due to the condition of the feed

and ranges in the country and vicinity from which the said animals were obtained by plaintiff, to wit, the country and vicinity in and around San Luis Obispo, State of California.

Defendant denies on information and belief that said animals were dairy cows, as alleged by plaintiff, but that it is informed and believes and upon such information and belief alleges that plaintiff purchased said cows at said city of San Luis Obispo, State of California, and in the vicinity thereof because same could be purchased very cheaply on account of there being no feed in said country and on account of the cows being in a poor, weak and starved condition.

Defendant further alleges that the climatic conditions of the country and vicinity in and around San Luis Obispo, State of California, where the said animals mentioned and described [38] by plaintiff were bred and raised, and from where plaintiff obtained said animals, are entirely different from the climatic conditions in and around Yuma, Arizona, and Phoenix, Arizona, and especially during the summer months, in this, to wit, that the climate of the country in and around San Luis Obispo, Calif., and the place where said animals were bred and raised, and from where the plaintiff obtained the said animals is and was at the time plaintiff so obtained the said animals cool and moist as compared with the climatic conditions which existed at that time, in the month of July, in and around Yuma and Phoenix, Arizona, all of which was well known to plaintiff at the time he so shipped said animals; and

if any loss or injury resulted to any of said animals, which this defendant expressly denies, that such loss or injury was wholly caused by plaintiff bringing said animals, in their then condition, as above set forth, from a cool moist climate, such as that time existed in and around San Luis Obispo, California, into an extremely hot and dry climate in Arizona.

VI.

That defendant is informed and believes and upon such information and belief alleges that immediately upon the arrival of said cattle at destination, to wit, at the city of Phoenix, Arizona, on July 5, 1913, over the line of railroad of defendant's connecting carrier, to wit, the Arizona Eastern Railroad, plaintiff took and drove all of said animals away without paying any of the freight charges due and owing to this defendant and its said connecting carrier for the transportation of said cattle, and without paying for the feed so provided by this defendant to said cattle in the course of said shipment, and that plaintiff has not prior to the commencement of this action, or at all, paid such freight or feeding charges, and [39] defendant is advised and informed and therefore alleges that by reason thereof plaintiff is not entitled to recover from this defendant for the matters and things set forth in his complaint herein.

VII.

Defendant denies generally each and every allegation in said complaint contained not herein expressly admitted.

WHEREFORE, defendant prays that plaintiff take nothing by his action herein, and that it have judgment for its costs.

FRANCIS M. HARTMAN,
Tucson, Arizona.

J. C. FOREST,
Phoenix, Arizona,
Attorneys for Defendant.

[Endorsements]: No. 142 (Phx.) In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Second Amended Pleas and Answer. Service of Copy Admitted this 11th Day of October, 1915. Hayes & Laney, Attys. for Plff. Filed Oct. 11, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [40]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

**Reply to Defendant's Second Amended Pleas and
Answer.**

REPLY TO DEFENDANT'S FIRST PLEA IN
BAR AS SET FORTH IN HIS FIRST
AMENDED ANSWER HEREIN.

Comes now the plaintiff, by Messrs. Hayes &

Laney, his attorneys, and replying to defendant's first plea in bar, demurs thereto, and for grounds of his demurrers says:

I.

That defendant has not in and by its first plea in bar, set forth facts sufficient to bar plaintiff's right of recovery upon his complaint herein.

II.

That the matters and things set forth in defendant's first plea in bar, are purely defensive matter, and fully set forth and pleaded as defensive matter in defendant's second amended answer herein, and are insufficient in themselves if taken as confessed, to constitute a complete defense to plaintiff's complaint herein.

WHEREFORE, plaintiff prays that defendant take nothing by reason of its first plea of bar herein, and that its said plea be dismissed.

HAYES & LANEY,

Attorneys for Plaintiff. [41]

Should the foregoing demurrers be overruled then plaintiff for reply to defendant's first plea in bar, admits the allegations contained in the first and second paragraphs thereof, and further replying to said plea, plaintiff denies that said cattle were loaded into the cars of the defendant at Los Angeles, California, on the 3d day of July, 1913, at about the hour of 3:40 P. M. and in that behalf alleges that said cattle were so loaded at approximately the hour of 4:40 P. M., and moved out of said station of Los Angeles, at about the hour of 5:30 P. M., and further replying, plaintiff denies that said cattle arrived at

the station of Yuma, Arizona, at the hour of 10:35 A. M. of the 4th day of July, 1913, and in that behalf alleges that said shipment arrived at the station of Yuma, at approximately 9:00 A. M. of said 4th day of July, 1914.

Plaintiff denies that at the time of the arrival of said shipment at Yuma, Arizona, they had been confined in said cars for a period of twenty hours without feed or rest, and in that behalf alleges that said shipment was so confined for the period of approximately sixteen hours and twenty minutes and no more. Plaintiff denies that it was absolutely necessary, or at all necessary, for defendant to unload said cattle at the town of Yuma, for feed and rest in order to comply with the provisions of the Act of Congress referred to in defendant's first plea in bar. Plaintiff admits that to have forwarded said cattle to Phoenix, Arizona, without unloading for feed and rest, would have caused them to be confined in the defendant's cars for a period slightly in excess of twenty-eight hours, viz.: for a period of approximately twenty-nine hours.

Further replying, plaintiff denies that he did not upon the arrival of said cattle at the town of Yuma, file with or tender to the defendant or its agent, a request in writing separate and apart from any printed bill of lading or other [42] railroad form, extending the time which said animals could be confined, from twenty-eight to thirty-six hours, as provided by said Statute.

Further replying, plaintiff admits that the defendant had at the time of said shipment, properly

equipped stock-pens and corrals at the station of Gila, Arizona, a distance of one hundred and twenty-three miles easterly from said town of Yuma, and alleges that said shipment could have been forwarded by the defendant, without in anywise violating the provisions of the so-called twenty-eight hour law. Further replying, plaintiff denies that the defendant expressed a willingness or anxiety to, or in anywise offered to transport said cattle to the said station of Gila; and further denies that he, the plaintiff, refused to permit the forwarding of said shipment to said station of Gila; and in that behalf alleges that the agent of the defendant neither offered to transport said cattle or even mentioned the name of said station, and alleges that the said agent of the defendant made no proposition conditionally or otherwise, to move said shipment for any distance whatsoever, beyond the station of Yuma, before unloading the same.

Further replying, the plaintiff is reliably informed and believes, and upon such information denies that the defendant notified its connecting carrier, the Arizona Eastern Railroad Company, by telegraph or otherwise, that said cattle were at the town of Yuma en route to Phoenix; and further denies that the defendant requested information from said Arizona Eastern, as to whether it could handle said cattle if the defendant should transport them to the station of Maricopa without feed and rest, and denies that the Arizona Eastern Railroad Company notified, advised or informed the defendant that it

could not so handle said cattle from the said station [43] of Maricopa, to place of destination at Phoenix, Arizona, within thirty-six hours from the time said cattle were loaded at the city of Los Angeles, California, but in that behalf alleges that said Arizona Eastern Company had at the time said shipment arrived at Yuma, completed arrangements with this plaintiff for meeting said shipment at Maricopa, and did actually proceed to Maricopa with its said train, which said train was in fact waiting at Maricopa to receive said shipment at the time the freight train on which said shipment arrived at Yuma, passed through the station of Maricopa.

Further replying, plaintiff denies that at the time of the arrival of said cattle at the town of Yuma, by reason of the heat at that place and the country through which said cattle had been transported or otherwise, they were in no condition to be kept longer in defendant's cars, and denies that they were not, upon their arrival at said town of Yuma, in proper condition to withstand further shipment without feed and rest, but in that behalf alleges that said shipment arrived at Yuma in good condition and that had said cars been moved forward without unloading at said station, the injuries to said cattle and the loss to the plaintiff as set forth in his said complaint herein, would not have been sustained.

For a further reply to said first plea in bar, plaintiff alleges that at the time of loading said shipment of cattle at San Luis Obispo, California, for shipment to Phoenix, as set forth in his complaint

herein, said cattle were healthful, in good flesh, and in every respect in first-class shipping condition; that because of the length of time said cattle would be confined in the defendant's cars in their transportation from Los Angeles to the city of Phoenix, in accordance with the arrangements set forth in plaintiff's [44] complaint, and hereinafter more fully set forth, plaintiff caused said cattle to be unloaded at the city of Los Angeles, in the defendant's stockyards for feed and rest, for a period of approximately twenty-six hours, and at the time of reloading said cattle at Los Angeles, they had been well fed, watered and rested, and were in first-class condition to withstand shipment from said station to the city of Phoenix, Arizona.

That prior to moving said cattle from Los Angeles, the plaintiff had arranged with the Arizona Eastern Railroad, the defendant's delivering carrier, in said shipment, to have said cattle immediately upon their arrival at Maricopa, Arizona, attached to a fast passenger train of said Arizona Eastern railroad, and immediately transported to their destination at Phoenix, Arizona; that had said cattle been handled in accordance with the plaintiff's arrangements made as aforesaid, and in keeping with plaintiff's instructions to the defendant's agents at the town of Yuma, as set forth in plaintiff's complaint, and hereinafter more fully referred to, said cattle would have arrived at Phoenix, Arizona, at the hour of 9:30 in the evening of said July 4th, 1913, after having been confined in defendant's

cars for a period of twenty-eight hours and fifty minutes. That the freight train to which plaintiff's shipment was attached, did, after consuming approximately one and a half hours at the station of Yuma, for the unloading of plaintiff's cattle, arrive at the station of Maricopa at about 7:15 P. M. of said 4th day of July, 1913.

For a further reply, plaintiff alleges that had said shipment been moved from the station of Yuma without unloading, and should unavoidable delays have necessitated the unloading of said cattle prior to arrival at Phoenix, Arizona, in order to comply with the Act referred to by defendant, the defendant had other feeding stations between said town of Yuma and the [45] city of Phoenix, Arizona, at which said cattle could have been unloaded.

For a further reply, plaintiff alleges that upon the arrival of his said shipment at the station of Yuma, the weather at said station was extremely hot, the stock-pens maintained by the defendant company at said station, very dusty, and entirely without shade of any character, and in no wise properly and suitably equipped for receiving said shipment for feed and rest, under the climatic conditions then existing at said station of Yuma; that the defendant owed to this plaintiff, the duty of maintaining suitably equipped pens in which to receive his said stock for feed, water and rest; that at the time of the arrival of said cattle at Yuma, the plaintiff informed and advised the defendant that its said feeding and rest pens were not suitably equipped to receive his

said shipment under the weather conditions then prevailing at said station, and that said cattle could not be unloaded and received in said pens in a proper and humane manner; and further advised the defendant that said cattle had been well fed, watered and rested at Los Angeles; that he had made arrangements with the Arizona Eastern Railroad Company to receive said shipment promptly on arrival at Maricopa, Arizona, and that said cattle could be shipped to Phoenix without injuring said shipment, and upon the refusal of the defendant to comply with plaintiff's request, that said shipment be moved forward in accordance with the arrangement he had made for the handling of said shipment, the plaintiff then and there delivered to the defendant's agents at said station of Yuma, the telegraph arrangements he had theretofore made with the Arizona Eastern Railroad Company, for the immediate forwarding of said cattle to Phoenix, Arizona, upon their arrival at Maricopa, Arizona, and [46] further tendered a request in writing, separate and apart from his shipping contract, extending the time to the defendant for unloading and resting said cattle, to the period of thirty-six hours from the date of loading said cattle in Los Angeles and further agreed and tendered said agent in writing, a full release from all liability for damage to the said plaintiff, resulting from the forwarding of said cattle, which said tender was refused by the defendant, through its said agents.

WHEREFORE, plaintiff prays that defendant

take nothing by reason of its first plea in bar herein.

HAYES & LANEY,
Attorneys for Plaintiff.

REPLY TO DEFENDANT'S SECOND PLEA IN
BAR, AS SET FORTH IN DEFENDANT'S
SECOND AMENDED ANSWER HEREIN.

Replying to defendant's second plea in bar herein, plaintiff demurs thereto, and for grounds of his demurrers, says:

I.

That defendant has not in and by its second plea in bar, set forth facts sufficient to bar plaintiff's right of recovery upon his complaint herein.

II.

That the matters and things set forth in defendant's second plea in bar, are purely defensive matter, and fully set forth and pleaded as defensive matter in defendant's second amended answer herein, and are insufficient in themselves if taken as confessed, to constitute a complete defense to plaintiff's complaint herein. [47]

WHEREFORE, plaintiff prays that defendant take nothing by reason of its second plea of bar herein, and that its said plea be dismissed.

HAYES & LANEY,
Attorneys for Plaintiff.

Should the foregoing demurrers be overruled, then for his reply to defendant's second plea in bar, plaintiff admits the transportation of his said cattle in five cars, from San Luis Obispo, California, to Phoenix, Arizona, over the line of railroad operated by the

defendant and its connecting carrier, the Arizona Eastern, under three contracts in writing made and entered into between the plaintiff and his duly authorized agents, Frank Whitton and James Ford, and the defendant, but has no information upon which to base a belief that the copies attached to defendant's second plea in bar, are true copies of the original contracts entered into between the plaintiff and his agents and the defendant, and therefore denies that said copies are correct copies of the original shipping contracts.

Further replying, plaintiff denies that in the handling of said shipment, the defendant and its connecting carrier fully performed each and every act required to be performed by them under the provisions of their said shipping contracts and the published freight tariffs governing said shipments, and further denies that the defendant is exempt from liability for the losses and injuries to said livestock, as set forth in plaintiff's complaint, under the terms of said shipping contracts or otherwise, or at all.

Further replying, plaintiff admits that said shipping contracts entered into between plaintiff and his agents and the defendant, contain a proviso that in case any loss or damage should be sustained for which defendant might be liable, [48] that plaintiff would make demand or claim therefor in writing, to the freight claim agent of the defendant, within ten days after the unloading of said cattle at Phoenix, Arizona, and that said contracts contain the further proviso that in the event of the failure of the plaintiff so to do, all claims for losses or dam-

ages in the premises, were waived, released and made void, but this plaintiff denies that he assented to the terms of said provisos or either of them;

Plaintiff admits that said cattle were unloaded and received by him on the 5th day of July, 1913, at the city of Phoenix, and admits that he did not nor did any person else to plaintiff's knowledge or on his behalf, make demands or claim in writing within said ten day period, to the freight claim agent of the defendant, or to the defendant or to any agent of the defendant, for the loss or damage sustained by him in said shipment; and

Further replying, plaintiff denies that it was entirely possible or at all possible for him to have given such notice in writing or at all, to the defendant or to its agents within said ten day period, after the unloading of said cattle, for the reasons hereinafter more fully set forth; and further replying, plaintiff denies that by reason of his failure or the failure of any person for him or on his behalf, to make such claim in writing within ten days after the unloading of said cattle, he waived or released all or any portion of his said claims against the defendant on account of the loss or damage to his said shipment, as set forth in his said complaint.

Further replying, plaintiff alleges that on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at the station of Yuma, Arizona, the defendant had full knowledge and notice of the injuries and damage to [49] plaintiff's cattle as set forth in his said complaint; that said cattle were unloaded by the defendant into its stock-pens

at the station of Yuma, between the hours of nine and ten o'clock A. M. on the 4th day of July, 1913, and between said date and the hour of 7:30 P. M. of said day, and prior to the reloading of said cattle into the defendant's cars, five of said cows died; that said cattle remained in the defendant's stock-pens at Yuma from about the hour of 10:00 A. M. of said 4th day of July, 1913, to 7:30 P. M. of said day, without any shelter or protection whatsoever from the intense heat of the sun, and were nursed and cared for during said entire period by the defendant's agents, assisted by one James Ford; that upon loading said cattle it became necessary to provide, and the defendant did provide, an additional car in which to *hip* thirteen of the sick and crippled cattle of the plaintiff to their destination at Phoenix; that at various points between the said station of Yuma and the city of Phoenix, the train officials in charge of said shipment, received telegraphic inquiries from other officials of the defendant, inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week, and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant, were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the one hundred and forty-seven (147) head of plaintiff's

cows which arrived at the destination alive, were such as to render it impossible for this plaintiff or any person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained [50] by the plaintiff, within said ten day period; that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of said injuries.

That on or about the 21st day of October, 1913, and after repeated efforts to arrive at any determination with the defendant and its delivering carrier, as to the extent and amount of damages sustained by the plaintiff, the plaintiff made demand in writing upon the defendant for the sum of Fifteen Hundred and Seventy Dollars (\$1,570) in satisfaction of the damages accrued to him at that time by reason of the acts of negligence set forth in his complaint, which said demand was refused. That thereafter and on, to wit, the 15th day of December, 1913, and as soon as plaintiff was able to ascertain the nature and extent of the injury and damage to his cattle as set forth in his complaint, he again made written demand upon the defendant for the sum of Twenty-six Hundred and Ninety-five Dollars (\$2,695) in full satisfaction of the damage and injuries sustained by him in the manner set forth in his said complaint, which demand was refused.

Further replying, plaintiff alleges that defendant has repeatedly waived the requirements on the part of plaintiff that he make said demand in writing within said ten-day period, in this, to wit, that defendant has on many occasions prior to the 21st day of Oc-

tober, 1913, recognized plaintiff's right to a recovery in some amount on account of his damages sustained as set forth in his complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff; that subsequent to the giving of the notice in writing on the 21st day of October, 1913, and the 15th day of December, 1913, as above set forth, defendant has attempted on two different occasions through its claim agents, [51] to adjust with plaintiff the loss and damage sustained by him as set forth in his said complaint.

WHEREFORE, plaintiff prays that defendant take nothing by reason of its second plea in bar.

HAYES & LANEY,

Attorneys for Plaintiff.

Answer.

Comes now the plaintiff in the above-entitled action, and not waiving his demurrers to defendant's pleas in bar herein, files this his amended reply to the affirmative matter set up by defendant in his second amended answer herein, by way of answer to plaintiff's complaint.

I.

For reply to paragraph number II of defendant's second amended answer, plaintiff admits that his said shipment of cattle arrived at the city of Los Angeles, California, on the 2d day of July, 1913, at about the hour of 2:35 P. M., and admits that said cattle were unloaded for feed and rest at said city, but denies that said cattle were again loaded at 3:40 P. M. on July 3, 1913, and in that behalf alleges that said cattle were reloaded at 4:40 P. M. on said date,

and moved out of said station at about the hour of 5:30 P. M., and

Further replying to said portion of the defendant's second amended answer, number II, plaintiff denies that said cattle arrived at the station of Yuma, Arizona, at about the hour of 10:35 A. M. of the 4th day of July, 1913, and in that behalf alleges that said shipment arrived at said station at about the hour of 9:00 A. M. on said day; and further replying, denies that at the time of the arrival of said cattle at Yuma, they had been confined in said cars for about twenty hours without feed and rest, and alleges that they were so confined for [52] the period of sixteen hours and twenty minutes, and no more, and plaintiff further replying, denies that it was absolutely necessary or at all necessary for the defendant company to unload said cattle at the town of Yuma for feed and rest, in order to comply with the Act of Congress therein referred to.

Further replying, plaintiff admits that defendant unloaded said cattle at the station of Yuma, but denies that defendant could not have transported said cattle beyond the station of Yuma before unloading them for feed and rest, without violating the Act of Congress referred to by defendant. Further replying, plaintiff admits that had said cattle been transported from the station of Los Angeles, to the city of Phoenix, without unloading them for feed and rest, they would have been confined in the defendant's cars for a period of approximately twenty-nine hours and no more.

Further replying, plaintiff denies that at the time

of the arrival of said cattle at Yuma, said cattle were in no condition to be kept longer in the defendant's cars, or to withstand further shipment without feed and rest, on account of the heat at Yuma and the country through which said cattle had been transported, or for any other reason.

Further replying, plaintiff denies that he did not upon the arrival of said cattle at the town of Yuma, file with the defendant or its agents, a request in writing separate and apart from any printed bill of lading or other railroad form, extending the time which said animals could be confined, from twenty-eight to thirty-six hours. Further replying, plaintiff admits that defendant had at the time of said shipment, stock-pens and corrals at the station of Gila, on its said line a distance of approximately 123 miles easterly from the town of Yuma, and in the direction in which said cattle were being transported, and admits that said company [53] did not have at said time, stock-pens or corrals at the station of Maricopa.

Further replying, plaintiff denies that upon the arrival of his said shipment at the town of Yuma, defendant either expressed a willingness or anxiety, or offered to transport his said cattle to the station of Gila, without unloading at said station of Yuma, for feed, water and rest, and further denies that he refused to permit the defendant to so forward said shipment; and in that behalf alleges that neither the agent of the defendant, nor any person in his behalf offered to transport said cattle to the station of Gila, and further alleges that the said agent of the defend-

ant made no proposition conditional or otherwise, to move said shipment for any distance whatsoever, beyond the station of Yuma, before unloading the same.

Further replying, the plaintiff is reliably informed and believes, and upon such information denies that the defendant notified its connecting carrier, the Arizona Eastern Railroad Company, by telegraph or otherwise, that said cattle were at the town of Yuma en route to Phoenix; and further denies that the defendant requested information from said Arizona Eastern, as to whether it could handle said cattle if the defendant should transport them to the station of Maricopa without feed and rest, and denies that the Arizona Eastern Railroad Company notified, advised or informed the defendant that it could not so handle said cattle from the said station of Maricopa, to place of destination at Phoenix, Arizona, within thirty-six hours from the time said cattle were loaded at the city of Los Angeles, California, but in that behalf alleges that said Arizona Eastern Company had at the time said shipment arrived at Yuma, completed arrangements with this plaintiff for meeting said shipment at Maricopa, [54] and did actually proceed to Maricopa with its said train, which said train was in fact in waiting at Maricopa to receive said shipment at the time the freight train on which said shipment arrived at Yuma, passed through the station of Maricopa.

Further replying, plaintiff denies that at the time of the arrival of said cattle at the town of Yuma, by reason of the heat at that place and the country

through which said cattle had been transported or otherwise, they were in no condition to be kept longer in defendant's cars, and denies that they were not upon their arrival at said town of Yuma, in proper condition to withstand further shipment without feed and rest, but in that behalf alleges that said shipment arrived at Yuma in good condition and that had said cars been moved forward without unloading at said station, the injuries to said cattle and the loss to the plaintiff as set forth in his said complaint herein, would not have been sustained.

For a further reply to said paragraph numbered II of defendant's second amended answer, plaintiff alleges that at the time of loading said shipment of cattle at San Luis Obispo, California, for shipment to Phoenix, as set forth in his complaint herein, said cattle were healthful, in good flesh, and in every respect in first-class shipping condition; that because of the length of time said cattle would be confined in the defendant's cars in their transportation from Los Angeles to the city of Phoenix, in accordance with the arrangements set forth in plaintiff's complaint, and hereinafter more fully set forth, plaintiff caused said cattle to be unloaded at the city of Los Angeles, in the defendant's stockyards for feed and rest, for a period of approximately twenty-six hours, and at the time of reloading said cattle at Los Angeles, they had been well fed, watered and rested, and were in first-class condition [55] to withstand shipment from said station to the city of Phoenix, Arizona.

That prior to moving said cattle from Los Angeles, the plaintiff had arranged with the Arizona

Eastern Railroad, the defendant's delivering carrier, in said shipment, to have said cattle immediately upon their arrival at Maricopa, Arizona, attached to a fast passenger train of said Arizona Eastern Railroad, and immediately transported to their destination at Phoenix, Arizona; that had said cattle been handled in accordance with the plaintiff's arrangements made as aforesaid, and in keeping with plaintiff's instructions to the defendant's agents at the town of Yuma, as set forth in plaintiff's complaint, and hereinafter more fully referred to, said cattle would have arrived at Phoenix, Arizona, at the hour of 9:30 in the evening of said July 4th, 1913, after having been confined in defendant's cars for a period of twenty-eight hours and fifty minutes. That the freight train to which plaintiff's shipment was attached, did after consuming approximately one and a half hours at the station of Yuma, for the unloading of plaintiff's cattle, arrive at the station of Maricopa at about 7:15 P. M. of said 4th day of July, 1913.

For a further reply, plaintiff alleges that had said shipment been moved from the station of Yuma without unloading, and should unavoidable delays have necessitated the unloading of said cattle prior to arrival at Phoenix, Arizona, in order to comply with the Act referred to by defendant, the defendant had other feeding stations between said town of Yuma and the city of Phoenix, Arizona, at which said cattle could have been unloaded.

For a further reply, plaintiff alleges that upon the arrival of his said shipment at the station of Yuma,

the weather at said station was extremely hot, the stock-pens [56] maintained by the defendant company at said station, very dutsy, and entirely without shade of any character, and in no wise properly and suitably equipped for receiving said shipment for feed and rest, under the climatic conditions then existing at said station of Yuma; that the defendant owed to this plaintiff, the duty of maintaining suitably equipped pens in which to receive his said stock for feed, water and rest; that at the time of the arrival of said cattle at Yuma, the plaintiff informed and advised the defendant that its said feeding and rest pens were not suitably equipped to receive his said shipment under the weather conditions then prevailing at said station, and that said cattle could not be unloaded and received in said pens in a proper and humane manner; and further advised the defendant that said cattle had been well fed, watered and rested at Los Angeles; that he had made arrangements with the Arizona Eastern Railroad Company to receive said shipment promptly on arrival at Maricopa, Arizona, and that said cattle could be shipped to Phoenix without injuring said shipment, and upon the refusal of the defendant to comply with plaintiff's request, that said shipment be moved forward in accordance with the arrangement he had made for the handling of said shipment, the plaintiff then and there delivered to the defendant's agents at said station of Yuma, the telegraph arrangements he had theretofore made with the Arizona Eastern Railroad Company, for the immediate forwarding of said cattle to Phoenix, Arizona, upon

their arrival at Maricopa, Arizona, and further tendered a request in writing, separate and apart from his shipping contract, extending the time to the defendant for unloading and resting said cattle, to the period of thirty-six hours from the date of loading said cattle in Los Angeles, and further agreed and tendered said agent in [57] writing, a full release from all liability for damage to the said plaintiff, resulting from the forwarding of said cattle, which said tender was refused by the defendant, through its said agents.

II.

For reply to paragraph numbered III of defendant's second amended answer, plaintiff admits the transportation of his said cattle in five cars, from San Luis Obispo, California, to Phoenix, Arizona, over the line of railroad operated by the defendant and its connecting carrier, the Arizona Eastern, under three contracts in writing made and entered into between the plaintiff and his duly authorized agents, Frank Whitton and James Ford, and the defendant, but has no information upon which to base a belief that the copies attached to defendant's second plea in bar, are true copies of the original contracts entered into between the plaintiff and his agents and the defendant, and therefore denies that said copies are correct copies of the original shipping contracts.

Further replying, plaintiff denies that in the handling of said shipment, the defendant and its connecting carrier fully performed each and every act required to be performed by them under the provisions of their said shipping contracts and the published

freight tariffs governing said shipments, and further denies that the defendant is exempt from liability for the losses and injuries to said livestock, as set forth in plaintiff's complaint, under the terms of said shipping contracts or otherwise, or at all.

Further replying, plaintiff admits that said shipping contracts entered into between plaintiff and his agents and the defendant, contain a proviso that in case any loss or damage should be sustained for which the defendant might be liable, that plaintiff would make demand or claim therefor in writing, to the freight claim agent of the defendant, within ten days [58] after the unloading of said cattle at Phoenix, Arizona, and that said contracts contain the further proviso that in the event of the failure of the plaintiff so to do, all claims for losses or damages in the premises, were waived, released and made void, but this plaintiff denies that he assented to the terms of said provisos or either of them.

Plaintiff admits that said cattle were unloaded and received by him on the 5th day of July, 1913, at the city of Phoenix, and admits that he did not nor did any person else, to plaintiff's knowledge, or on his behalf, make demands or claim in writing within said ten day period, to the freight claim agent of the defendant, or to the defendant or to any agent of the defendant, for the loss or damage sustained by him in said shipment; and

Further replying, plaintiff denies that it was entirely possible or at all possible for him to have given such notice in writing or at all, to the defendant or to its agents within said ten day period, after

the unloading of said cattle, for the reasons herein-after more fully set forth; and further replying, plaintiff denies that by reason of his failure or the failure of any person for him or on his behalf, to make such claim in writing within ten days after the unloading of said cattle, he waived or released all or any portion of his said claims against the defendant on account of the loss or damage to his said shipment, as set forth in his said complaint.

Further replying, plaintiff alleges that on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at the station of Yuma, Arizona, the defendant had full knowledge and notice of the injuries and damage to plaintiff's cattle as set forth in his said complaint; that said cattle were unloaded by the defendant into its stock-pens [59] at the station of Yuma, between the hours of nine and ten o'clock A M on the 4th day of July, 1913, and between said date and the hour of 7:30 P. M. of said day, and prior to the reloading of said cattle into the defendant's cars, five of said cows died; that said cattle remained in the defendant's stock-pens at Yuma from about the hour of 10:30 A. M. of said 4th day of July, 1913, to 7:30 P. M. of said day, without any shelter or protection whatsoever from the intense heat of the sun, and were nursed and cared for during said entire period by the defendant's agents, assisted by one James Ford; that upon loading said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen of the sick and crippled cat-

tle of the plaintiff to their destination at Phoenix; that at various points between the said station of Yuma and the city of Phoenix, the train officials in charge of said shipment, received telegraphic inquiries from other officials of the defendant, inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week, and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant, were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the one hundred and forty-seven (747) head of plaintiff's cows which arrived at the destination alive, were such as to render it impossible for this plaintiff or any person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained by the plaintiff, within said ten-day period; [60] that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of said injuries.

That on or about the 21st day of October, 1913, and after repeated efforts to arrive at any determination with the defendant and its delivering carrier, as to the extent and amount of damages sustained by the plaintiff, the plaintiff made demand in writing upon the defendant for the sum of Fif-

teen Hundred and Seventy Dollars (\$1,570) in satisfaction of the damages accrued to him at that time by reason of the acts of negligence set forth in his complaint, which said demand was refused. That thereafter and on, to wit, the 15th day of December, 1913, and as soon as plaintiff was able to ascertain the nature and extent of the injury and damage to his cattle as set forth in his complaint, he again made written demand upon the defendant for the sum of Twenty-six Hundred and Ninety-five Dollars (\$2,695) in full satisfaction of the damage and injuries sustained by him in the manner set forth in his said complaint, which demand was refused.

Further replying, plaintiff alleges that defendant has repeatedly waived the requirements on the part of plaintiff that he make said demand in writing within said ten day period, in this, to wit, that defendant has on many occasions prior to the 21st day of October, 1913, recognized plaintiff's right to a recovery in some amount on account of his damages sustained as set forth in his said complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff; that subsequent to the giving of the notice in writing on the 21st day of October, 1913, and the 15th day of December, 1913, as above set forth, defendant has attempted on two different occasions through its claim agents, to adjust with plaintiff the loss and damage sustained by him as set forth in his said complaint. [61]

III.

For his reply to paragraph number IV, of defend-

ant's second amended answer, plaintiff denies that said contracts or any of them were fairly made or entered into between the plaintiff and his duly authorized agents and the defendant, and denies that the plaintiff or his duly authorized agents or either of them, stipulated that the agreed valuation of said livestock was the sum of Thirty Dollars (\$30) per head, and denies that said valuation as was named in said shipping contracts was so placed and named by the plaintiff or by either of his agents for the purpose of securing lower freight rates or at all; and alleges that at the time of signing said contracts, neither the plaintiff nor his agents had any knowledge or information as to the value placed or to be placed upon said shipment, in said contracts, and further alleges that at the time of the signing of said contracts, no writing of any kind or nature whatsoever, was embodied therein; that the agent of the defendant as San Luis Obispo, California, placed before *his* plaintiff and his agents, the said printed forms of contract in blank, and requested the plaintiff and his agents to sign the same, and that he, the said agent, would, at his leisure, fill in said contracts and deliver them to the conductor in charge of said shipment, for delivery by him to the plaintiff and his agents. That neither the plaintiff nor any of his agents saw said contracts or any of them until they were delivered to them by a freight conductor in charge of said shipment on the second freight division of defendant's line out of San Luis Obispo, California, and that not until such time did the plaintiff or his agents have any knowledge as to the

valuation named in said contracts, or as to the terms and conditions thereof. That said valuations were arbitrarily named [62] and placed in said contracts by the agent of the defendant, without the knowledge or assent of the plaintiff or of any of his agents to said valuation, and that neither the rate to be charged upon said shipment nor the valuation to be placed upon said cattle, was mentioned or discussed by the plaintiff or his agents with the agent of the defendant; that this plaintiff is not advised of the purpose or motive of the agent of the defendant, in placing a valuation of \$30 per head on said shipment, and that had the plaintiff been permitted to insert the valuation of his said cattle in said shipping contracts, or had the valuation of his said cattle been asked by the agent of the defendant, he would have stated to said agent the true value thereof, and would not have assented to the valuation named, therein by said agent. That the defendant should not be permitted under the conditions above set forth, to limit the amount of plaintiff's recovery herein by said valuations arbitrarily made and placed in said contracts without the knowledge and assent of the plaintiff or his agents as above set forth.

IV.

Replying to the allegations set forth in paragraph numbered V, of defendant's second amended answer, plaintiff denies that his said cows were in poor, weak and starved condition at the time and place of their delivery to the defendant for shipment, but in that

behalf alleges that said cows and all of them were well-fed dairy cows in good flesh, and in every respect in robust and healthy condition; and further denies that by reason of the climatic conditions under which said cattle were raised, they were in anywise unfitted for transportation over the line of the defendant to Phoenix, Arizona. [63]

V.

Replying to paragraph number VI, of defendant's second amended answer, plaintiff admits that he has not paid the freight charges upon said shipment, and that he has not paid for the feed provided for said cattle while en route to Phoenix, for the reasons:

1st. That he has been unable to agree with the defendant or its delivering carrier, as to the amount of freight that should be paid upon said shipment under the conditions set forth in plaintiff's complaint; and

2d. For the further reason that he has been unable to adjust with the defendant or its delivering carrier, the losses sustained by him as set forth in his said complaint; and in that behalf further alleges that on the arrival of said cattle at Phoenix, Arizona, the said cattle were voluntarily delivered to plaintiff by the Arizona Eastern Railroad Company, and that any lien held by the defendant or the said Arizona Eastern Railroad Company on said cattle for said freight and feeding charges, was thereby expressly released by the voluntary act of said company; that plaintiff has at all times been and is now, ready, able and willing to pay the freight charges upon said shipment when the same is fairly and

properly measured and adjusted with this plaintiff.

WHEREFORE, plaintiff prays that the defendant take nothing by reason of its second amended answer herein.

HAYES & LANEY,
Attorneys for Plaintiff.

[Endorsements]: No. 142. In the United States District Court, for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Reply to Defendant's Second Amended Pleas and Answer. Reced. Copy. J. C. Forest, Attorney for Defendant. Filed Oct. 12, 1915, at — M. George W. Lewis, Clerk. By R E. L. Webb, Deputy. [64]

**[Order Sustaining Demurrer to Defendant's Pleas
Involved, etc.].**

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October
12th, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PAC. CO.,

Defendant.

The demurrers of the plaintiff to the defendant's pleas in bar as set out in its second amended pleas

and answer on file herein are this day argued by counsel, P. H. Hayes, Esquire, appearing on behalf of the plaintiff and J. C. Forest appearing on behalf of the defendant; and, upon consideration thereof by the Court,

IT IS ORDERED that the said demurrers be and the same are hereby sustained, to which ruling of the Court, the defendant by counsel excepts and asks that his exception be noted upon the record and the same is accordingly done by the clerk. [65]

[Minutes of Trial—October 26, 1915.]

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October
26th, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

Trial of this cause came on regularly to-day, the plaintiff in person and with P. H. Hayes, Esquire, his counsel, and Francis M. Hartman, Esquire, and J. C. Forest, Esquire, counsel for the defendant, appearing in open court, and both sides announce themselves ready for trial. Thereupon D. H. Little is ordered appointed and sworn in as court reporter

in this case and he is accordingly duly sworn to act as court reporter in this case in open court. The Court, thereupon orders the clerk to call into the jury-box 18 jurors and their names are called and all answering thereto, respectively, take their places in the jury-box. Said jurors are thereupon duly sworn on their *voir dire*. Whereupon J. H. Allen is challenged by the plaintiff for cause and such challenge allowed by the Court and C. D. Young is called in his stead and duly sworn on his *voir dire*. Whereupon said C. D. Young is challenged for cause by the defendant and such challenge is allowed by the Court and Daniel J. Brislin is called in his stead and duly sworn on his *voir dire* and all are found to be duly qualified and accepted. Thereupon, each side strikes three names from the list and the remaining 12 on the said list, as follows: Oscar Moore, H. L. Pattee, Walter A. Moser, B. A. Neighbors, C. G. Cappel, Frank Cooper, James B. Marrs, W. D. Reading, James W. Ladd, W. T [66] Tweedy, W, D, Foreman, and Daniel J. Brislin, are selected by the clerk and are duly sworn to well and truly try the issue joined between the plaintiff and defendant herein.

Thereupon, the plaintiff by P. H. Hayes, Esquire, his attorney, reads his complaint and makes his opening statement, and Francis H. Hartman, Esquire, counsel for the defendant reads defendant's answer.

The plaintiff, then, to maintain upon his part the issue herein, calls Frank R. Stewart and James Ford as witnesses upon behalf of the plaintiff and they

are duly sworn, examined and cross-examined. .

The hour of adjournment having arrived, and the trial of the case not being completed, the Court admonishes the jury and orders the further trial hereof adjourned and continued until Wednesday, October 27, 1915, at 9:30 o'clock A. M. [67]

[Minutes of Trial—October 27, 1915.]

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October
27th, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Trial of this case is to-day resumed pursuant to an order of continuance made on yesterday, plaintiff in person, counsel for both sides and all jurors being present in court.

Chas. A. Whitfield, and C. E. Connor are called as witnesses upon behalf of the plaintiff and are sworn, examined and cross-examined. James Ford is recalled as a witness on behalf of the plaintiff for further cross-examination and is cross-examined. Frank E. Whitton and R. H. Fields are called as witnesses upon behalf of the plaintiff and are duly

sworn, examined and cross-examined. Frank R. Stewart is recalled as a witness for the plaintiff for further examination, and is examined and cross-examined. James Ford is recalled as a witness for the plaintiff for further examination and is examined and cross-examined. Frank E. Whitton and R. H. Fields are recalled as witnesses for the plaintiff for further examination and are examined and cross-examined. A. N. Gurley is called as a witness for the plaintiff and is duly sworn, examined and cross-examined. Thereupon the plaintiff rests his case.

The defense, then, to maintain upon its part the issue joined, offers Defendant's Exhibits 4, 5, 2 and 6 in evidence, and they are admitted and filed. Thereupon, William Wilson, Morris W. Howard, O. M. Shreve, A. R. Gatter and William H. [68] Francis are called as witnesses upon behalf of the defendant and are duly sworn, examined and cross-examined.

The hour of adjournment having arrived and the trial of the case not being complete, the Court admonishes the jury and orders the further trial hereof adjourned and continued until Thursday, the 28th day of October, A. D. 1915, at 9:30 o'clock A. M. [69]

[Minutes of Trial—October 28, 1915.]

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October 28,
1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

Trial of this case is this day resumed, pursuant to an order of continuance made on yesterday, the plaintiff in person, counsel for both sides and all jurors being present in open court.

C. S. Norman, Garfield Christianson, J. J. Casey and Charles Davis are called as witnesses upon behalf of the defendant, and are duly sworn, examined and cross-examined. The depositions of Frank Witcosky, Ed Peterson, Millard Peterson, F. D. Martin, and M. E. McKirahan were read in evidence. Thereupon the defendant rests its case

C. S. Norman is recalled as a witness in rebuttal for the plaintiff and is examined. Frank R. Stewart, Frank E. Whitton and James Ford are recalled as witnesses in rebuttal on behalf of the plaintiff and are examined and cross-examined. Vernon Ford is called as a witness in rebuttal for the plaintiff and is

duly sworn, examined and cross-examined. Thereupon the plaintiff rests his case.

Thereupon, the defendant moves the Court for a directed verdict for the defendant on the grounds set out in the reporter's transcript of the testimony and said motion is resisted by the plaintiff and is argued by counsel and, thereupon, IT IS ORDERED by the Court that said motion be and the same is hereby denied, [70] to which ruling and action of the Court the defendant by counsel excepts.

The hour of adjournment having arrived, and the trial of the case not being complete, the Court admonishes the jury and orders that the further trial hereof be adjourned and continued until Friday, October 29, 1915, at 9:30 o'clock A. M. [71]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Motion by Defendant for Directed Verdict.

Now comes the above-named defendant, Southern Pacific Company, and moves the Court for a directed verdict in its favor, and, in case said motion shall be

denied, that it have leave to go to the jury.

FRANCIS M. HARTMAN,
Tuscon, Arizona,
J. C. FOREST,
Phoenix, Arizona,
Attorneys for Defendant.

[Endorsements]: No. 142 (Phx.). In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Motion for Directed Verdict. Filed Oct. 28, 1915. George W. Lewis, Clerk. [72]

[Minutes of Trial—October 29, 1915.]

*In the United States District Court for the District
of Arizona.*

Minute Entry Appearing Under Date of October
29th, 1915.

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

Trial of this case is this day resumed pursuant to an order of continuance made on yesterday, the plaintiff in person, counsel for both sides, and all jurors being present in open court.

There being no further testimony offered, and the

evidence being closed, argument of counsel is had; the Court instructs the jury orally, the delivery of written instructions having been expressly waived in open court, the plaintiff excepting to that part of the Court's instructions to the jury as shown in the reporter's transcript of the testimony for the reasons contained in that transcript, and the defendant excepting to the portions of the instructions of the Court as shown in the reporter's transcript of the testimony for the reasons therein set out, and the plaintiff also excepting to the ruling of the Court in giving all the instructions asked for by the defendant and given by the Court, and for refusing to give all the instructions asked for by the plaintiff; and the defendant excepting to the ruling of the Court in giving all the instructions asked for by the plaintiff and given by the Court and for the Court's action in refusing to give all the instructions asked for by the defendant; and thereupon the jury retire to their room in charge of A. J. Stark and F. A. Weage, their bailiffs, first duly sworn for such purpose, to consider of their [73] verdict. After a time said jury return into court in charge of their bailiffs and, upon being asked if they have agreed upon a verdict, through their foreman, state that they have agreed. Whereupon, said jury, through their foreman, present their verdict, as follows, to wit:

“FRANK R. STEWART,

Plaintiff,

Against

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Verdict.

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff and we do assess his damages at the sum of (\$2,090) Two Thousand Ninety and no/100 Dollars.

W. D. READING,

Foreman."

And the clerk inquiring of said jury if such is their verdict, they state that it is and so say they all. Thereupon, said jury is ordered discharged from the case; AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that judgment be entered in favor of the said plaintiff and against said defendant in the sum of Two Thousand Ninety and no/100 (\$2,090) Dollars, in accordance with the verdict of the jury.

[Order Extending Time to Prepare and File Bill of Exceptions.]

No. 142.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC CO.,

Defendant.

Upon stipulation of counsel for both sides herein, IT IS ORDERED that the defendant be given sixty days from this date within which to prepare and file

its bill of exceptions herein and that stay of execution be granted to the defendant for the same period of time. [74]

FRANK R. STEWART,

Plaintiff,

Against

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Verdict.

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff, and we do assess his damages at the sum of (\$2,090), Two Thousand Ninety and no/100 Dollars.

W. D. READING,

Foreman.

[Endorsements]: No. 142. United States District Court, District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Verdict. Filed Oct. 29, 1915. George W. Lewis, Clerk. By ———, Deputy Clerk.
[75]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Judgment.

This cause came on regularly to be heard the 26th day of October, 1915, before the Court sitting with a jury, the plaintiff appearing with his counsel, Messrs. Hayes & Laney, and the defendant appearing by its counsel, Messrs. Francis M. Hartman and J. C. Forest.

Witnesses were duly sworn and examined on behalf of the plaintiff and defendant, and both oral and documentary evidence introduced on behalf of plaintiff and defendant; and after arguments by counsel for plaintiff and defendant, and instructions by the Court, the jury retired in charge of bailiffs to consider of their verdict. In due time the jury returned into the courtroom with their verdict, which said verdict was duly recorded, and was in words, letters and figures as follows, to wit:

“FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury, duly impaneled and sworn in the above-entitled action, upon our oaths do find for the plaintiff, and we do assess his damages at the sum of (\$2,090), Two Thousand and Ninety and no/100 Dollars.

W. D. READING,
Foreman.” [76]

WHEREFORE, it is ORDERED AND ADJUDGED that the plaintiff do have and recover of and from the defendant, the sum of Two Thousand and Ninety Dollars (\$2,090), together with his costs herein incurred, taxed and allowed, in the sum of Ninety-three and 60/100 Dollars (\$93.60), together with interest on each of said sums, at the rate of six per cent (6%) per annum from date hereof until paid.

[Endorsements]: In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Judgment. Recd. Copy this 30th day of October, 1915. J. C. Forest, Attorney for Defendant. Filed Oct. 30, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy.
[77]

*In the United States District Court for the District
of Arizona.*

No 142—PHOENIX.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that on the twenty-sixth day of October, 1915, the above-entitled cause came on for trial before the above-entitled court and

a jury duly empaneled, Honorable William H. Sawtelle, presiding, plaintiff appearing by P. H. Hayes, his counsel, and the defendant appearing by Francis M. Hartman, and J. C. Forest, its counsel, and the following proceedings were had:

[Testimony of Frank R. Stewart, for Plaintiff.]

FRANK R. STEWART, the plaintiff, called as a witness in his own behalf, and being first duly sworn, testified in substance as follows:

Direct Examination.

By Mr. HAYES.—My name is Frank R. Stewart. I reside in Phoenix. Resided there between July 1st and 5th, 1913, at which time I shipped 152 head of cattle over the Southern Pacific Company's lines from San Luis Obispo to Phoenix. We loaded the cattle on July 1st, at San Luis Obispo, in the afternoon. Commenced loading around three o'clock. Finished about half-past five. They were dairy cows and were loaded into five cars. We got out of San Luis Obispo that night about ten o'clock. We unloaded at Los Angeles the next day, I think about noon. I accompanied the shipment from San Luis Obispo to Los Angeles, and as far as Yuma. Mr. Frank Whitten and Mr. James Ford also accompanied the [78*—1†] shipment. The cattle were in good condition when unloaded at Los Angeles. They remained in the pens there until the next afternoon, about 4:40 Pacific time, when we began loading. The cattle were fed and watered

*Page-number appearing at foot of page of original certified Record.

†Original page-number of Bill of Exceptions as same appears in Original Certified Transcript of Record.

(Testimony of Frank R. Stewart.)

well in the corrals in Los Angeles. I helped to load them. Before arriving at Yuma I received a telegram from Mr. Field, at Phoenix, who was my partner in the real estate business. I turned the telegram over to the agent of the Southern Pacific Company at Yuma. We arrived at Yuma about nine o'clock on the morning of the 4th of July, 1913, Pacific time. I went up to the office and the agent asked me, "Are you going to unload?" and I said, "No, I am going through." And he said, "Well, I will have to see about that." In a few minutes he said to me, "You will have to unload." I said, "I am not going to unload these cattle here; if you unload them, you will kill every head of cattle I have got. The cattle are cool. They are still in good shape. I don't propose to unload the cattle here in these sand pens." There is no shade there whatever. The stock-pens at Yuma were sand dunes with a fence around them, where the cattle had been trampling manure into the sand for years. It was hot as an oven. There was no shade at all. No trees. I said to the agent, "If you unload the cattle you unload them at your own risk," and he took the cattle out of my hands and unloaded them, and I left and went up town. Possibly an hour was consumed in our conference and argument with the agent with respect to unloading. Neither myself nor my men had anything to do with the unloading. I did not go back to the stockyards where the cattle were until along about five o'clock,

(Testimony of Frank R. Stewart.)

and found that five of the cattle had died, and the others were in pretty bad shape. They seemed to be stiffened up. The cattle were reloaded at Yuma at about half-past seven into six cars. We loaded the first five cars, and we had thirteen cripples in a [79—2] separate pen that the railroad company furnished an extra car to load them into. The cattle, when they left San Luis Obispo were in very good flesh. Some of them were quite fat. The cows that died at Yuma were the fattest ones. They were overcome with the heat. The shipment arrived at Phoenix on the fifth of July, about one o'clock in the afternoon. The cattle when they arrived at Phoenix were in a badly stove-up condition from the effects of the heat. I had trouble getting them out to the pasture. Several of them staggered all the way up the road. We left one of the animals in the car. We could not get her out. The majority of the cows were milking at the time we shipped them. We milked them at Los Angeles. The shipment of the cows stopped the flow of milk on some, and some of them did not give more than half what they were giving. There were five others died here after arrival. All told, twenty-five died. I had had experience prior to that time in the purchase and sale of dairy cows in the Salt River Valley, Arizona, of the grade and physical condition of these cows at the time they were loaded at San Luis Obispo. The reasonable market value of dairy cows of such grade and in such physical condition as these cows were prior to their injuries, in the Salt River

(Testimony of Frank R. Stewart.)

Valley, was eighty-five to ninety-five dollars, and some had been selling at a hundred dollars. These cows were worth eighty-five to ninety dollars a head in Phoenix. I sold forty-five head of them—agreed to sell them to a man by the name of Segrist at eighty-five dollars a head. I afterwards took the cattle back. Seventeen of them died. I sold eighty-seven head of these cattle for sixty-five dollars a head. These eighty-five head were worth in their normal condition, eighty-five dollars a head. I have sold nine animals to a man named Ross for eighty-five dollars a head. [80—3] Within three or four days after the arrival of the shipment at Phoenix the matter of my claim for damages was taken up with the Arizona Eastern Railroad. The Southern Pacific people did not say anything to me about paying the freight on the cattle, because I told them I would not pay the freight and two or three days afterwards a man from their office came to see me and I told him I would not pay the freight on the cattle until our damages was adjusted and then he came to see me three or four times after that. I first presented a claim in writing to the agent of the Arizona Eastern and the Southern Pacific Company for damage I think on the second of October. At that time I had not ascertained the whole extent of my damage. I lost some of the cattle after that. I think I next made a claim in writing in the early part of December for loss of eleven head at eighty-five dollars a head and damages to eighty-seven head of

(Testimony of Frank R. Stewart.)

twenty dollars a head and twenty dollars that I paid for care of the cattle. Some of the cattle died after December.

Cross-examination.

By Mr. HARTMAN.—I have lived in Arizona for fifteen years and in and around Phoenix for six or seven years. Been in the cattle business the last couple of years. I had shipped cattle into Arizona from San Luis Obispo, California, prior to this shipment. I shipped them in May and June. I went up to San Luis Obispo to get these cattle. San Luis Obispo is near the coast—I guess about fifteen miles. It was not as hot where I bought these cattle, at San Luis Obispo as it was here in Arizona. It was dry there at that time. There was a drouth there at that time. I knew it got pretty warm in and around Phoenix on the fourth of July and I knew that Yuma was lower in altitude than Phoenix. I know that the cattle had to go through the southern [81—4] portion of California. I know that it is warm through there. I knew that it was warm in Yuma. I don't think it was much warmer than here. I have heard that Yuma has the reputation of being a very hot town in the summer-time. I had heard that before I went to San Luis Obispo to bring these cattle into Phoenix. I selected the time for bringing the cattle in. (Witness here shown document marked for identification Defendant's Exhibit No. 4) I have seen this document before. This is my signature on the bottom at the left hand corner. I signed this

(Testimony of Frank R. Stewart.)

paper at San Luis Obispo on or about the first day of July, 1913. Mr. James Ford did not own any of these cattle. He did own some of them. I bought some from him. Thirty head of cattle were shipped in the name of James Ford. He signed one of these papers there at San Luis Obispo, on July first, 1913, while we were loading the cattle. All three of us signed one of these papers, myself, Whitten and Ford. Sixty-two head of cattle were shipped in the name of Frank Whitten. I saw him sign a paper which looked like this one (referring to document marked for identification Defendant's Exhibit No. 5). At the time that the cattle were shipped I knew that they were shipped sixty head in my name, sixty-two head in the name of Mr. Whitten and thirty head in the name of Mr. Ford at my request. I did not keep any record of the time of reloading in Los Angeles. They may have commenced loading at three twenty P. M., I am only testifying about that from my recollection. I went from Los Angeles to Yuma with the cattle. Rode in the caboose. Got to Yuma about nine o'clock in the morning. I know it was nine o'clock because I was figuring on the time I would get to Maricopa that evening. The railroad company treated the cattle the best they could I guess. They watered the cattle. When I went up to the pens at five o'clock there was water in the [82—5] troughs and I saw evidences of where they had been using water pretty generously—had wet down the dust. I can't say that I ever saw any sheds over

(Testimony of Frank R. Stewart.)

cattle-pens in Arizona. I don't have sheds in my pasture for the cattle to stay under. I have shade trees. I turn the cattle out in the pasture and let them run in the sun. I knew the railroad company did not have any cattle-pens at Maricopa. I boarded a passenger train at Yuma and came on to Phoenix. I came on here and made arrangements to take care of these cattle. I did not pay any fare. When the cattle arrived at Phoenix I drove them away without paying the freight and have not paid the freight yet. I did not surrender the original livestock contract and bill of lading marked for identification as Defendant's Exhibit No. 5 when I took the cattle from the railroad company. I kept that. Some young man down there at the freight house told me to take the cattle.

[Testimony of James Ford, for Plaintiff.]

James Ford, being called as a witness on behalf of the plaintiff and first duly sworn, testified in substance as follows:

Direct Examination.

By Mr. HAYES.—My name is James Ford. I reside at the present time about three miles north of Phoenix. Was residing at Cambria, thirty-five miles from San Luis Obispo, California, in July, 1913. During the latter part of June or the early part of July, 1913, I sold Mr. Stewart fifty-seven head of cows *a* heifers. I was paid for them. They were dairy cows. I have been in the dairy business for the last five years constantly. I have handled cattle

(Testimony of James Ford.)

and stock of all kinds since I was twenty-one years of age—for the last thirty years. I am familiar with dairy cows generally. This bunch of dairy cows I sold to Mr. [83—6] Stewart I consider an average bunch of cows—some of them above the average. Their physical condition was good. They were mixed breed—Holsteins, Jerseys, Durhams and Guernseys. I drove them from my place to San Luis Obispo. None of the cattle gave out or fell by the way side. Everyone was delivered that we started with except one that had her leg fractured. I accompanied the shipment to Phoenix. I was acquainted with the remainder of that shipment of 152 head. Some of the others were a good deal better than what I had. The others compared pretty much the same with mine. They were an average bunch of dairy cattle. I helped to unload and load the cattle at Los Angeles. Their condition was good. They were well fed and had all the water they wanted at Los Angeles. They were in fine condition when they were loaded on the cars at Los Angeles. The cattle stood the trip fine up to that time. We arrived with the shipment of cattle at Yuma about nine o'clock Pacific time. The reason I remember I saw two large clocks in the office, side by side, and one of them was nine o'clock and the other was ten o'clock. I saw Mr. Stewart have a telegram at Yuma. He gave it to one of the operators there—one of the agents. When the cattle arrived at Yuma they were in good condition as far as I could see. They were all stand-

(Testimony of James Ford.)

ing quiet and nice and perfectly cool. I went to the office with Mr. Stewart and Mr. Whitten. I know Mr. Stewart was talking very hard to keep the cattle from being unloaded, and wanted to ship them on through and wanted to sign a release for doing anything, and they argued and argued for a long time and we all three argued with them that if they unloaded the cattle there they would die from the heat. All I know is that I heard transpire between Mr. Stewart and the operator. The operator stated he would have to unload the cattle. He [84—7] had wired to Tucson. Mr. Stewart did not unload the cattle, the railroad company and the people there unloaded them. I saw the cattle-pens of the Southern Pacific Company at Yuma into which the cattle were unloaded. They were just bare corrals, right out in the open, no sheds, no shade trees or shade of any kind. The bottom of the corrals were dusty, sand and dust. I did not see the cattle unloaded. We all went over to the hotel and had our breakfast or dinner—the first we had had to eat that morning, and about an hour after that I went up to the corrals. One of the men from the office came over to the hotel and asked for Mr. Stewart. He said the cattle was getting in bad shape. I said, “Well, we had better go down there and see what can be done for them,” and when we got down there they were all pretty near dead and would have all died in a few minutes if we had not got water to them. They were overcome with the heat. They were standing about half way around

(Testimony of James Ford.)

over the water as close as they could get. Some of them were dead and some almost ready to drop and some did drop dead while I was in the corral. I told this gentleman, whoever he was, that the best thing I could see was to get water to these cattle as soon as he could and spray them, and I got buckets and wherever there was a bunch of cattle I threw water over them, and when he saw the cattle recover from the effects of the water he ordered the men in the yard there, the section hands with buckets until we had the cattle in a nice condition. That is they were cooled off and they were not suffering any more with the heat. I am accustomed to handling cattle. Pouring water on them when they were so hot would stiffen them and cripple them in a way. I observed them after that, and I remember they were pretty badly crippled. They were all fat cows, every one of them. The fattest of the cows in the bunch [85—8] died. They naturally would. The heat will kill a fat animal quicker than it will a thin one. I assisted in loading the cattle back into the cars that night—six cars. The railroad company gave us an extra car to put the cripples in—about fifteen or sixteen head. If the cattle had not had water there I think they would have all died without a doubt. There were several corrals there—four or five, and they had bunched them off in separate corrals, about a carload in a corral. We were notified about the cattle after we had had our lunch. We had lunch a few minutes after we got in. I judge it must have been along about one or two o'clock when we were notified

(Testimony of James Ford.)

about the cattle. I accompanied the shipment to Phoenix. Overheating will cause a cow to stop giving milk. I saw the cattle after they were unloaded at Phoenix. Some of them were pretty badly used up. I live in the Salt River Valley, near Phoenix, now. The feeding conditions in the vicinity of San Luis Obispo at the time these cattle were shipped—in some places the feed was pretty short. In other places they had plenty of feed. At the time I sold these cattle I was feeding them hay and letting them run on the pasture, only we had to buy alfalfa meal and crushed barley. I can't say that any of these cattle were poor. Some of them were a little thin. I would not say that any of these cattle were too poor to withstand shipping. They did stand it.

Cross-examination.

By Mr. HARTMAN.—San Luis Obispo is a good climate and the fog comes in sometimes from the ocean—quite often in the summer-time. The climate in San Luis Obispo in the summer-time is much cooler than the climate here around Phoenix, Arizona. I have been here around Phoenix about two years. It had been a pretty dry [85½—9] year around San Luis Obispo, at the time these cattle were shipped. They had a drouth. I came along with the cattle from Phoenix to San Luis Obispo to help take care of them. I did not write down the time that we arrived at Yuma. When we got into Yuma we went right over and got our dinner at the club, Mr. Stewart and Mr. Whitten and myself, and I stayed there until I

(Testimony of James Ford.)

went back to the corral. Neither one of us stayed with the cattle. We did not help to unload the cattle. The most of the country we had come through was a desert. The cattle had been in the cars quite a long time without any water, and without feed or rest, from about four-thirty P. M. the day before, I guess, until nine o'clock on the morning of July fourth. I don't suppose water would have hurt the cattle any. After we got in we went to the club house there, to get our breakfast. The cattle had water when they arrived at Yuma. I suppose if we had poured water on them immediately upon unloading at Yuma and kept pouring water on them, undoubtedly we would have kept them from getting hot and that would have saved them. If we had stayed there and poured water on them, it would have kept them from getting overheated. Mr. Stewart did not help unload the cattle. He did not help take care of the cattle at Yuma, as I know of. After Mr. Stewart left the office he went over to the hotel and we ate our breakfast or dinner. I went with him. The three of us went. When I went back to the corrals about one o'clock Mr. Stewart was not helping take care of the cattle. I saw him later in the evening. He refused to have anything to do with them. He refused to go down there and help take care of the cattle. I did not help take care of them until the cattle were dying from the heat, and then I did. I think if it was not for me the cattle would have all died. When I got down there they got the hose [86—10] and turned the water on and they got the

(Testimony of James Ford.)

hose, because I told them that water would help them. I did not attend to taking care of the cattle; I went off up town. I went over to the hotel and stayed there.

(Adjournment taken until October 27, 1915.)

October 27, 1915.

[Testimony of C. A. Whitfield, for Plaintiff.]

C. A. WHITFIELD, called as a witness on behalf of the plaintiff, and first duly sworn, testified in substance, as follows:

Direct Examination.

By Mr. HAYES.—My name is C. A. Whitfield. Reside in Phoenix, Arizona. Resided here nine years. Am in the cattle business at the present time. Was so engaged in July, 1913—buying and selling cattle—shipping them in here and selling—handled dairy cattle. Am acquainted with the market value in the Salt River Valley, at Phoenix, Arizona, during the month of July, 1913. I saw a shipment of 147 cattle which arrived in Phoenix on July 5, 1913, consigned to Mr. Stewart. I would say that the cattle were worth from eighty-five to ninety dollars.

Cross-examination.

By Mr. HARTMAN.—I saw the cattle in the stockyards, to the best of my recollection, on July 5th, when they were shipped in here. It was right after the fourth of July, I know. I didn't take any memorandum of it at the time. They were in the pens in the yards.

[Testimony of C. E. Connor, for Plaintiff.]

C. E. CONNOR, being called as a witness on behalf of the plaintiff and first duly sworn, testified in substance, as follows:

Direct Examination. [87—11]

By Mr. HAYES.—My name is C. E. Connor. Reside about three miles north of Phoenix. Resided in Salt River Valley, Arizona, about twelve years—buying and selling dairy cattle. I was acquainted with the market value of dairy cows in the Salt River Valley during the month of July, 1913. I did not see this shipment of cattle at the time it was delivered in Phoenix. I did not see them until after they were sold, when I saw a portion of them, the cattle which Mr. Segrist bought from Mr. Stewart. I would say the market value in their normal condition would be an average of about ninety dollars.

Examination by the Court.

The opinion that I had of these cattle at the time was based on the valuation in my own estimate, comparing them with cattle that I had sold him myself. Considering the fact that I knew nothing of any of them being overheated or abused in shipment, they would have been worth ninety dollars a head at that time, assuming that they had received no injury. I did not see these cattle until some time about the fore part of August or possibly the latter part of July. They were in very poor condition and without any knowledge that they had been injured in any

way, I would say that they were worth ninety dollars apiece.

[Testimony of James Ford, for Plaintiff (Recalled).]

JAMES FORD, recalled as a witness on behalf of plaintiff, testified in substance as follows:

Cross-examination (Continued).

By Mr. HARTMAN.—(Document marked for identification “Defendant’s Exhibit No. 2” handed to witness.) I signed this paper. That is my signature. I suppose I had the original of this paper in my possession. I must have had it. I can’t produce it now. [88—12] I never have paid any more attention to it after we landed. I put it in my pocket and went back to California. I was only here four days and went back to California, and, of course, I don’t know what became of the papers. I was along with these cattle when they were being transported from San Luis Obispo to Phoenix. One carload of cattle was shipped in my name. I had to ship one carload in my name in order to come with the cattle. That is the reason the one car was shipped in my name, so I could ride free along with the cattle. I did not pay any fare from San Luis Obispo to Phoenix. I came along with the cattle to load and take care of them. I have been handling dairy cattle a good many years—fifteen or twenty years. When we arrived at Los Angeles we saw that the cattle were fed and taken care of, and I attended to that or helped to attend to it. I was right there helping to take care of the cattle. Mr. Stewart was there part of the time also. Mr. Whitten was there also. We

(Testimony of James Ford.)

were all three there. We hired milker to milk the cows in Los Angeles. I think we milked the cows twice in Los Angeles. We milk dairy cows twice a day when they are not on the road. They ought to be milked twice a day if possible. If they are not milked twice a day, it injures them somewhat. If cows go thirty-six hours without milking, it affects the cattle for the time being—is injurious to them. It is a fact that if the climate at the town of Yuma had been the same, or practically the same as the climate at San Luis Obispo, or where the cattle came from, the cattle would not have been injured at all by unloading at Yuma.

[Testimony of Frank H. Whitten, for Plaintiff.]

FRANK H. WHITTEN, being called as a witness on behalf of the plaintiff, and first duly sworn, was examined and testified in substance, as follows:

Direct Examination. [89—13]

By Mr. HAYES.—My name is Frank H. Whitten. I reside three miles north of Phoenix. Have resided in the Salt River Valley, Arizona, twenty-two years. Engaged in livestock and real estate business. I accompanied Mr. Stewart to California during the latter part of June, 1913. I went with Mr. Stewart to pass upon some milk cows for him and assist him in the purchase of some milk cows in California, about 150 head, I think. I saw all of the cattle purchased by Mr. Stewart. I am acquainted with that shipment. I accompanied the shipment from San

(Testimony of Frank H. Whitten.)

Luis Obispo to Phoenix, Arizona. At the time they were shipped they were in perfect health. Some of them were fat and some just good living condition. They were all in good, healthy, thrifty condition. I have had experience in shipping cattle and handling shipments of cattle. I would not say that there were any of these cattle that were not in suitable flesh and condition generally to withstand shipment. We shipped them in five cars. One of the shipping contracts was in my name. The cattle were unloaded and fed at Los Angeles and milked twice. Had plenty of water. The cattle were in first-class condition when they were unloaded at Los Angeles. They were in first-class condition when reloaded there. It was in the neighborhood of nine o'clock—some time in the forenoon of July fourth—when we arrived at Yuma. I would not be able to state the hour just exactly. I am figuring on the time that we got to lunch. Before that we were, perhaps, arguing around the office an hour or an hour and a half, and then we went over and had dinner, and I know I was eating about a quarter after eleven. I observed the condition of the cattle upon arrival at Yuma. We looked the cattle over when we got to Yuma, and we all remarked that cattle never shipped finer. They were in fine shape. I went [90—14] to the freight office with Mr. Stewart. We had quite an argument there for a little while. We thought we were going right through, and Mr. Stewart said, "What time do we get out of here with these cattle?"

(Testimony of Frank H. Whitten.)

And the agent said, "You don't get away to-day." And he says, "I am going out of here with these cattle this morning; I am going on to Maricopa." And he says, "You are going to unload these cattle here." And Mr. Stewart says, "We are not going to unload these cattle." And I says, "We don't want to unload the cattle at Yuma, to-day." The agent says, "I have orders; I have been ordered by the dispatcher in Tucson to unload these cattle in Yuma." I says, "These cattle will all die to unload them in that hot sun at this time of day." He says, "I can't help it, I have got orders from the dispatcher to unload them." "Well," I says, "we will do anything to release you of responsibility. Wire this man, if you can, and see if he won't let us go on through." He says, "What shall I tell him?" I says, "Tell him we will do anything but unload in Yuma at this time of day." He went off, and I supposed he wired. He stayed about twenty or thirty minutes, and he came back and says, "The dispatcher says to unload these cattle here." And Mr. Stewart says, "We don't unload here. If you unload them, you unload them at your own peril," and then he up and says, "We will have to unload them." The agent took some of the force from the office, and goes and unloads the cattle himself, and we left him. Mr. Stewart had received a telegram from some source prior to his arrival at Yuma. He handed the telegram to the agent at Yuma. The corrals of the Southern Pacific Company at Yuma at that time were per-

(Testimony of Frank H. Whitten.)

fectly good. There was white sand about half knee deep in them. There was no shade. There is no shade in any stockyards. They had water. There was no shade trees in the corrals or vicinity, and no sheds of any [91—15] sort. The cars in which the cattle were being transported had roofs on them and they were ventilated sides. I next saw the cattle after unloading at Yuma about five o'clock in the evening. I noticed there were five dead ones and the others had their tongues out and their mouths open. Some of them were stiff trying to walk around the corral. The cattle had all been wet. There was a lot of men with buckets there, and they went and got the fire department, they told me, and turned the hose on the cattle. The cattle that died were fat cows—the ones that suffered the most, and the fat ones suffered more than the thin ones. I think the cattle were reloaded about seven o'clock in the evening—completed about nine o'clock. They were loaded into six cars. I think there were thirteen that we could not get in the other cars and we had to take and tail them to get them in, and the agent gave us another car and we put these thirteen in another car. I know what I am talking about. I was right there. On the way from Yuma to Phoenix I think the conductor came to me as many as two times and said he had communications from the main office in Tucson in regard to these cattle—how they were getting on and all about them. I think we arrived at Phoenix about noon on the next day. They came through fairly good from Yuma to Maricopa.

(Testimony of Frank H. Whitten.)

I observed the cattle after they were unloaded at Phoenix. They were stiffened—quite a lot of them and about all in. I believe there were two or three left along the road. They were in bad shape. One of the cattle remained in the cars. She was taken out on a wagon and hauled out. That animal finally died. I have had experience in buying and selling dairy cows in the Salt River Valley. I know what was the market value of dairy cows in the Salt River Valley in the summer of 1913. The market value of dairy cows of the grade [92—16] and quality of this shipment, when in their normal, healthy condition, would run from eighty-five to one hundred dollars. They were a good average or a little better.

Cross-examination.

By Mr. HARTMAN.—Two cars of these cattle were shipped in my name, so I could go along to help take care of them. That is what I accompanied the cattle for, to help take care of them. Mr. Stewart, Mr. Ford and myself were all care-takers on this shipment of five cars of cows. When we arrived at Los Angeles, Mr. Stewart, Mr. Ford and myself attended to the unloading of the cattle and cared for them after that, watered them, had them milked and reloaded them. We were on the road from Los Angeles to Yuma approximately sixteen hours, I should judge, maybe a little more or less. In going from Los Angeles to Yuma you pass through some orange groves and lemon groves, then over the mountains into pasture lands and then over another mountain

(Testimony of Frank H. Whitten.)

range into a sandy desert. I suppose seventy-five miles of it is sand dunes before you get to Yuma. It seems a long ways. Part of it is dry, absolutely desert country. It is pretty warm, hot and dusty, and when we got to Yuma it was hot. San Luis Obispo, from where the cattle came, is about ten or twelve miles from the coast, I should judge. It is quite a bit hotter in Yuma than in Los Angeles where the cattle were fed and watered. When we arrived at Yuma, neither myself, Mr. Ford or Mr. Stewart helped or assisted in unloading the cattle and we did not assist in taking care of the cattle while at Yuma. After the cattle were loaded into the cars again at Yuma, we climbed on to the train along with them and came to Phoenix. We did not pay anything for our fare from San Luis Obispo to Phoenix. We went along with the cattle as [93—17] care-takers. When we arrived at Yuma, Mr. Stewart, Mr. Ford and myself went off up town. After we had this talk with the agent the three of us went off up town and took a bath and had something to eat. We did not attend to the cattle.

Redirect Examination.

By Mr. HAYES.—The Southern Pacific Company will not ship cattle unless some one accompanies the shipment. I have shipped cattle over the Southern Pacific road from Los Angeles to Phoenix without unloading. You can ship from Los Angeles to Phoenix without unloading, but you have to make arrangements for that before you ship.

(Testimony of Frank H. Whitten.)

Recross-examination.

By Mr. HARTMAN.—There were only five cars of this shipment and not enough to make a special train. They were transported in one of the company's regular freight trains. I understand there were stockpens at Gila Bend, about 125 miles from Yuma. I never unloaded there. I should judge it would have taken about ten hours to have transported the cattle from Yuma to Gila Bend.

[Testimony of R. H. Field, for Plaintiff.]

R. H. FIELD, being called as a witness on behalf of the plaintiff and first duly sworn, was examined and testified in substance, as follows:

Direct Examination.

By Mr. HAYES.—My name is R. H. Field. I reside at Phoenix, Arizona. Resided near here about five years. Was residing in the valley in July, 1913. Am acquainted with Frank R. Stewart, the plaintiff. I know of Mr. Stewart's having made a shipment of cattle from San Luis Obispo, California, to Phoenix, Arizona, in July, 1913. I rendered Mr. Stewart some service with reference to this. [94—18] I went to the office of the Southern Pacific Company, took his letter and his telegram to the office and discussed it with Mr. Gatter in the office. I made some arrangements with Mr. Gatter relative to this shipment. I had a letter from Mr. Stewart from San Luis Obispo, and I took that letter first and discussed it, and I think it was two or three days later I got a telegram from Mr. Stewart—I think it was from Los An-

(Testimony of R. H. Field.)

geles—and I also took that. I think it was some time in the late afternoon of the third of July. I had this conversation with Mr. Gatter in his office at Phoenix. He said that they would bring the cattle up. Mr. Stewart's letter was demanding that the cattle come through from Los Angeles without unloading at Yuma and they assured me that they could get it through. He said they would bring it up from Maricopa either on the passenger or on the other train, and I wired Mr. Stewart to that effect. When I wired him it was almost night. I sent a night letter. I went home when I was through. I went home at night. I was living at Buckeye at that time. That was on the evening of the third of July. I understood that the cattle would be in here, at that time, some time about nine o'clock on the fourth. I went home and attended a celebration and left there about four or five o'clock on the afternoon of the fourth and came back to Phoenix. I could not get hold of Gatter when I came in, or Scott, so I went down to the office at the depot and they told me that it was all off, that the dispatcher had absolutely refused to or that the Tucson people had refused to bring them through. I don't know where the letter or the telegram is. The telegram was addressed to me. I went to the office of the Western Union Telegraph Company, but I could not get a copy of the telegram.

Cross-examination. [95—19]

By Mr. HARTMAN.—(Witness handed paper

(Testimony of R. H. Field.)

marked for identification "Defendant's Exhibit 6.") This is something like the message I received. It is a copy of it. I don't think there is any doubt about that. At that time I lived at Liberty, 25 miles from Phoenix. I did not have any office in Phoenix at that time. I went home the third of July, twenty-five miles from Phoenix. I remember that, because it was the day before the fourth of July, and I remember coming back to Phoenix on the fourth. It was late in the afternoon of the fourth when I got to Phoenix. I went to a picnic and then came here to Phoenix.

**[Testimony of Frank R. Stewart, for Plaintiff
(Recalled).]**

FRANK R. STEWART, being recalled as a witness in his own behalf, testified in substance, as follows:

Redirect Examination.

By Mr. HAYES.—I had a communication with Mr. Fields relative to forwarding this shipment of cattle to Phoenix. I received a reply from Mr. Field. I don't know the station where I got this message, but I got it before we got into Yuma on the morning of the fourth of July. It was relative to arrangements made for the forwarding of the shipment. I gave the telegram to the agent at Yuma. As near as I can recall the wording of the telegram was, "Have arranged through Mr. Gatter to bring you up on passenger train from Maricopa to-night if you reach there in time or you will come up on a freight." I

(Testimony of Frank R. Stewart.)

think it was a night message, probably dated the third of July. I received it the morning of the fourth.

[Testimony of James Ford, for Plaintiff (Recalled).]

JAMES FORD, recalled as a witness for the plaintiff testified in substance as follows: [96—20]

Redirect Examination.

By Mr. HAYES.—I saw and heard read the telegram received by Mr. Frank R. Stewart from Mr. Field some time prior to our arrival at Yuma. It was in regard to bringing the cattle up from Maricopa as soon as possible. They were either to bring them on a freight or on a passenger.

[Testimony of Frank H. Whitten, for Plaintiff (Recalled).]

FRANK H. WHITTEN, recalled as a witness on behalf of plaintiff, testified in substance as follows:

Redirect Examination.

By Mr. HAYES.—I saw the telegram testified to by Mr. Stewart, which was received prior to his arrival at Yuma. I did not read it. He read it to me. It said “Arranged with Gatter to bring cattle up.”

Recross-examination.

By Mr. HARTMAN.—I don’t know what this message was in reply to.

[Testimony of R. H. Field, for Plaintiff (Recalled).]

R. H. FIELD, being recalled as a witness for plaintiff, testified in substance as follows:

Redirect Examination.

By Mr. HAYES.—I don't recall the wording of the telegram, but it was to the effect that they were to bring the cattle up from Maricopa.

Recross-examination.

By Mr. HARTMAN.—I received a telegram from Mr. Stewart and sent him one.

[Testimony of Dr. A. N. Gurley, for Plaintiff.]

Dr. A. N. GURLEY [97—21] a witness on behalf of the plaintiff, being first duly sworn, testified in substance as follows:

Direct Examination.

By Mr. HAYES.—My name is A. N. Gurley. I am a veterinary surgeon. I have practiced my profession twenty-five years. Resided in Phoenix four years. Am acquainted with Mr. Stewart. Was practicing my profession in Phoenix during the months of July, August, September and October, 1913. Was called in my professional capacity to see some cattle in the possession of Mr. Segrist, in the summer of 1913. Some of the cows had bad udders and two or three abortions and general debility of milk cows was about the run of their condition. I think some seven or eleven of the cows died. The effect upon dairy cows of heat prostration is that many times the animal will succumb to the attack

(Testimony of Dr. A. N. Gurley.)

and some may survive it. It generally leaves them in an emaciated condition. Generally, the milk supply would be diminished and many times it would be eliminated. Pouring water on a cow in a state of heat prostration will cause the blood supply to be concentrated, or pass to the brain, the lungs, or the heart, and sometimes direct all the circulation to those organs, and I never approved of the treatment. It also has the effect of stiffening the animal. It would probably save the animal's life in many instances. Heat prostration upon a pregnant cow many times produces abortion. Many times the animal becomes barren after the condition of abortion. Once in a while the animal will survive this condition and come out of it apparently in very good condition.

Cross-examination.

By Mr. HARTMAN.—A dairy cow ought to be milked twice a day—twice in [98—22] twenty-four hours. If they are not so milked it produces extension of the udder and if allowed to continue it will produce what we know commonly as an inflammatory condition of the udder and many times the cow will dry up. Dairy cows should be given access to water continually. Nineteen hours is too long a time for a dairy cow to go without a drink, especially in hot weather. In the kind of weather they have down at Yuma and at Phoenix. A cow is better off if she is milked; there is no question about it. These cows having been loaded on the cars in Los Angeles on

(Testimony of Dr. A. N. Gurley.)

the afternoon of July 3d, and arriving in Yuma on the morning of July 4th, in the hot season of the year like they have at Yuma, and after having been on the cars and in the cars nineteen hours, it would have been much better for them to unload and milk and water than to be transported any further. I am not familiar with the climate around Yuma in the summer, but assuming that the climate of Yuma is something like the climate around Phoenix, in my opinion, dairy cows, which are accustomed to being milked every day and given feed and water, after bringing them from a cool, moist climate, into a climate such as we have around Phoenix, here in the summer-time, in the month of July—it would cause some to become overheated or have heat exhaustion from the climatic conditions, and it would not be good for them.

Redirect Examination.

By Mr. HAYES.—Assuming that these cattle, dairy cows, after having been fed and watered at Los Angeles in the evening about five o'clock, and having been transported from Los Angeles to Yuma, in cars protected by a roof and with open sides, and arriving in Yuma at approximately nine o'clock the next morning, and that the corrals at Yuma had no shade or protection of any sort, with [99—23] sand in the bottom of them and dry manure to a depth of four to six inches, and that the temperature in the city of Yuma was approximately 112 degrees in the shade at the time of their arrival, I would think that the animals would have been better off to

(Testimony of Dr. A. N. Gurley.)

have unloaded them at Yuma and given them a drink of water than to have transported them on and kept them in motion until that evening before unloading them. You have a car of cattle and you pack that car close with cattle and their heat-generating power is greater by the confinement. No, I don't think an animal should go without water that length of time. I don't care what the laws are, that is my opinion, and I think a good fresh drink of water will lower the heat generation faster than anything else, and the point I am trying to make is this, that these cattle would have been perhaps better off if they had had a drink of water in Yuma; but supposing the cattle had been unloaded at Yuma in a corral such as has been described, entirely unprotected by shade, at the hour of ten-thirty in the morning, and remained there unprotected until seven-thirty in the evening, I think they would have been better off without the unloading.

Recross-examination.

By Mr. HARTMAN.—Cattle become feverish on the train when they are packed in the cars. Unloading them often if the pens had any covers and giving them a drink of water would tend to lower the temperature of the animals. I don't mean to say that it would have been better to have brought the cattle on to Phoenix, which would have necessitated keeping them in the cars to exceed twenty-eight hours. Assuming that the cattle would have been on the cars without feed or rest or water for approximately

(Testimony of Dr. A. N. Gurley.)

thirty-three hours and thirty minutes from the time they were loaded in Los Angeles until they would have reached Phoenix, [100—24] if they had come on through without unloading for feed and rest at Yuma, under the conditions existing there at the time, on July 4, 1913, and under the conditions existing through the country where they were transported from Los Angeles to Yuma, in my opinion I believe that the cattle would have been better off if they had been unloaded and watered and reloaded, but I don't think it is the proper thing to leave the cattle there in that condition all day.

In my opinion it would have been better to have unloaded the cattle at Yuma than to have brought them on to Phoenix without water, feed or rest.

Redirect Examination.

By Mr. HAYES.—Assuming that prior to moving the cattle out of Los Angeles they had been well fed and watered and rested, and at the time of their arrival at Yuma, under the conditions referred to, they had been in the cars sixteen hours, and that they were unloaded at Yuma about ten-thirty in the morning, and remained in the corrals until approximately seven-thirty in the evening, and assuming, further, that the shipment would have arrived at Phoenix approximately eleven hours from the stopping of the train at Yuma, I think the cattle would have been better off to have been watered at Yuma.

WHEREUPON the plaintiff rested his case and the defendant, to sustain the issues upon its part,

offered the following evidence:

The defendant thereupon offered in evidence the document theretofore identified by plaintiff, Frank R. Stewart, and marked for identification "Defendant's Exhibit No. 4," being one of the livestock shipping contracts covering the shipment; [101—25] which was admitted in evidence without objection and which document is hereinafter more fully set forth.

Defendant also offered in evidence a certain other document, marked for identification "Defendant's Exhibit No. 5," being one of the livestock shipping contracts covering the shipment, which was admitted without objection, and which is hereinafter more fully set forth.

Defendant also offered in evidence a certain other document theretofore marked for identification "Defendant's Exhibit No. 2," which was one of the livestock contracts covering said shipment; which was admitted without objection and is hereinafter more fully set forth.

Defendant also offered in evidence a certain other document, being a copy of a telegram from R. H. Field to F. R. Stewart, and heretofore marked for identification as "Defendant's Exhibit No. 6," which was admitted in evidence and which is hereinafter more fully set forth.

[Testimony of William Wilson, for Defendant.]

WILLIAM WILSON, being called as a witness on behalf of defendant and first duly sworn, was examined and testified in substance, as follows:

Direct Examination.

By Mr. HARTMAN.—My name is William Wilson. I live now at Yuma, Arizona. I lived in Tucson, Arizona, in July, 1913. My business at that time was chief dispatcher for the Southern Pacific Company. I had been such for eight years. At the present time I am trainmaster. I was chief dispatcher for the Southern Pacific Company at Tucson, Arizona, on July 4, 1913. In a general way my duties as chief dispatcher were to keep track of shipments of livestock, as to the time when they were loaded, when the twenty-eight hours or the thirty-six hours would be up, and [102—26] arrange trains to handle such shipments, furnish cars and look after movement of transportation on the division assigned to me. I had jurisdiction over that portion of the road from El Paso to Yuma and two branches and I had charge of the handling of cattle over the road. On July 4, 1913, I was working as chief dispatcher in the office at Tucson. I had something to do on July 4, 1913, with the cattle involved in this lawsuit, in the way of issuing instructions as to the unloading of the cattle. I did it all. The first thing I did was when the yardmaster at Patio, that is the freight yard office at Yuma, called me up at eleven-thirty A. M. on July 4, 1913, and said there were five cars of cattle

(Testimony of William Wilson.)

there. That is the information that came over the telegraph wire to me, that train No. 244 had arrived with five cars of cattle. This information was not recorded in writing at the time. I just listened to the instrument. It is the same as talking over a telephone, only it is in Morse Code that we used by using dots and dashes and it takes a little longer. We do not always record and preserve a record of such communications, not where a train is waiting. Not where it is to be handled within a few minutes. When the yardmaster told me over the wire that there were five cars of cattle at Yuma for Phoenix, on this train, I asked him when they were loaded and received a reply, and he says they want to go through to Phoenix. My reply was, "Wait a minute." I simply got hold of the operator at Maricopa, which is our relay or junction point, and said to him—gave him the information as to where these five cars of cattle were and destination and the time that the thirty-six hours would be up—"Can you handle?" After receiving answer or reply from the operator at Maricopa, I said to the yardmaster at Yuma over the wire "A. & E. (Arizona Eastern) can't handle. The stock will have [103—27] to be unloaded at Yuma unless they desire to come to Gila. We will try to make Gila inside of the twenty-eight hours." The wire was open for a few seconds and the reply came back to me that the gentleman in charge of the stock would hear to nothing except going to Phoenix and that if they were unloaded at

(Testimony of William Wilson.)

Yuma the cattle would be turned over to the company. I then issued instructions that the cattle be unloaded at Yuma. I issued those instructions because the A. & E. (Arizona Eastern) had advised that they could not handle inside of thirty-six hours and it was not satisfactory to the shipper to unload at Gila, and there was no place except Gila to unload between Yuma and Maricopa and no place to unload at Maricopa—no cattle-pens at Maricopa. Gila is 123 miles from Yuma. It would have taken a train about ten hours, counting the necessary delays in getting in and out of Yuma, to have gone from Yuma to Gila. I know what time that train arrived at Yuma on the 4th day of July, 1913, which brought these cattle from Los Angeles. This train arrived at Yuma at 11:35 A. M. on July 4, 1913, mountain time, which is the same as ten-thirty-five Pacific time or Los Angeles time. That same train which brought the cattle into Yuma from Los Angeles, and from which the cattle were unloaded at Yuma, arrived at Maricopa at ten forty-five P. M., July 4, 1913. We keep a record of each train that is moving over the division, the time that the men are called to go to work, the engine number, the train number, the names of the men who are on the train, the time the train departs from Yuma, and as it passes each station until it gets to its destination. I have this record here. It is called the train sheet. (Witness produces train sheet). A train sheet is started each night at 12:01 A. M. That is when the day starts. A

(Testimony of William Wilson.)

record of each movement of each train or engine is kept on that sheet for the [104—28] day's business, and the time that they pass from one station to the other is reported by the operator at that station, and the dispatcher wherever he is located, and whenever the train finally gets to the end of the run and the crew is released, that is noted on the sheet, and the sheet is kept until all the trains that started out on that sheet complete their runs for the period of twenty-four hours. This train sheet is one of the records that a railroad company keeps in the ordinary course of handling its business. (Train sheet marked for identification as "Defendant's Exhibit No. 7".) Mr. H. W. Howard, train dispatcher, was present at Tucson, in the office, at the time and heard the telegraphic conversation take place that I have just related. He was handling these trains on this train sheet from Tucson to Yuma. That is, he wrote this information down here and wrote these figures down on this train sheet as to the time of arrival and departure of trains and issued orders to these trains, that is, where they would meet and pass. Mr. Howard was handling the telegraph key at the time between Tucson and Yuma. (Witness handed train sheet marked for identification "Defendant's Exhibit No. 7."). This is one of the train sheets I have just been describing. This is a train sheet dated July 4, 1913, and covers that portion of the road from Yuma to Tucson—shows the movement of each train for the time it left until it arrived at its destination.

(Testimony of William Wilson.)

It shows a correct record of the arrival and departure of each and every train on the road between Yuma and Tucson on that day at each station where there was an operator on duty. It shows a correct record of the time that the train which brought the cattle into Yuma arrived at Yuma. It arrived at Yuma at eleven-thirty-five A. M., July 4, 1913, mountain time, or ten thirty-five Pacific time. Mr. Howard, who was on duty at that [105—29] time as train dispatcher wrote down these figures of the arrival of this train at Yuma. Mr. Howard is here. All these records and the operation of the trains were under my charge and control.

Defendant offers in evidence the train sheet heretofore marked for identification "Defendant's Exhibit No. 7," which was admitted and which is hereinafter more fully set forth.

At that time I had had about fifteen years' experience handling cattle shipments over railroads, about twenty-five years' experience altogether.

If these cattle were loaded at Los Angeles at four twenty-five P. M. on July 3, 1913, and if they had been transported on after arrival at Yuma, to Phoenix, without unloading them at Yuma, they would have been on the cars in the neighborhood of thirty-six hours and thirty minutes or thirty-seven hours.

Assuming that the cattle were loaded in Los Angeles at four forty-five P. M. on July 3, 1913, it would have been impossible to have transported them to Phoenix without unloading them at Yuma within

(Testimony of William Wilson.)

twenty-eight hours—it would have been absolutely impossible. It might have been possible to have made Gila, and when I suggested that the shipper go to Gila I took a great responsibility on my shoulders, but I was willing to take the chance. Assuming that these cattle were loaded at Los Angeles at 4:45 P. M. on July 3, 1913, and arrived at Yuma at 10:35 A. M., I understood that they had been in the cars eighteen hours and ten minutes, it would have taken that train about an hour and ten minutes to have gotten out of the yard at Yuma. That is the best we could do on a train of that kind. There was not enough of these cattle to justify running a special train. [106—30]

I don't know of any cattle-pens in Arizona, or any place else for that matter, that have sheds over them for shade for the cattle.

Cross-examination.

By Mr. HAYES.—Our cattle-pens at Gila have no shade trees about them. This freight train upon which the cattle were shipped out of Los Angeles was designated as Number 244. It is a through freight but not very fast. (Referring to train sheet.) There are two trains here scheduled "244"—two sections of 244 on that day. This train which carried this shipment of cattle into Yuma, as I understand it, on this train sheet, is second 244. The other train, designated as First 244 on the train sheet is a melon extra. That train only came from the Imperial Valley. That was a melon train of fifty-one cars, more or less. The information which came over the wire

(Testimony of William Wilson.)

from Yuma was also to the effect that this train brought the cattle into Yuma. As to the wire conversation with Yuma I am speaking from memory, but as to the reply I received from the operator at Maricopa, that is in writing and I think is in the possession of Mr. Hartman, our attorney here. (Witness handed a document.) I have seen this before. It was made under my direction at 11:48 A. M. on July 4, 1913. This is the memorandum which I had made at the time with reference to the transaction. I had figured that the thirty-six hours would be up about 4:45 A. M., July 5, 1913. Mr. Shreeve was the operator at Maricopa. This notation here "Tell DS no, can't handle them" means that "DS" was the dispatcher's call at Tucson. That is the reply received from Phoenix—"Tell DS"—that is tell me at Tucson—"can't handle."

I have a record of the time the train departed from [107—31] Yuma which brought these cattle into Yuma. It left Yuma at 12:50 P. M., July 4, 1913, one hour and fifteen minues after it arrived from the west. In other words, it was in the yards at Yuma one hour and fifteen minutes. The train sheet shows that the train arrived at Gila at 7:20 P. M., July 4, 1913. That train would not have arrived at Gila as soon as it did if it had taken the five cars of cattle.

I made a proposition to the shipper of these cattle—suggested that they be forwarded to Gila. I suggested this to the yardmaster at Yuma. After I suggested this to the yardmaster at Yuma the wire

(Testimony of William Wilson.)

was open for a few minutes at the other end. That was after I had stated to the yardmaster at Yuma that the Arizona Eastern could not handle the cattle, that they must be unloaded and suggested to the man in charge that he come on to Gila—and then the reply comes that he has flew off the handle and turned them over to the company. I knew the weather conditions at Yuma and knew we had stock-pens at Gila. I knew the cattle, if they had been transported on from Yuma in that train would have arrived at Gila in the evening. I did not know they could have reached Gila within the twenty-eight hour period, but I was willing to take a chance and put passenger trains in the sidings if necessary in order to do something to help out. This train did actually arrive at Gila within the twenty-eight hour period. The reason that I did not direct the shipment to move on to Gila was that the man in charge says “nothing doing, I won’t unload at Yuma, Phoenix is where I am going and I won’t consent to anything else.” And another reason was, we only had an agent at Gila to unload the cattle and at Yuma we had forces and were better prepared. We had no way to take care of the cattle at Gila. We only have an agent there. The freight train crew [108—32] does not help to unload. We had feed and water at Gila—which could be obtained if the shipper is there to help out. The shipper always orders his own feed. I have never seen it handled any other way. I had nobody at Gila to unload the cattle except the agent. The distance from Gila to Maricopa is 42 miles, of which 20 is up

(Testimony of William Wilson.)

a one per cent grade. That train made the run from Yuma to Maricopa in approximately ten hours, but the reason for that was that the tonnage was reduced by taking out these cattle at Yuma, otherwise it would have been two hours longer. If the five cars of cattle had remained in that train it would have been necessary for the train to have doubled one of the hills which would have caused a delay of an hour, and with the extra five cars of cattle they would have been unable to make this time, which would have put it into Maricopa at least an hour and a half or two hours later. This train did arrive at Maricopa within about twenty-nine hours from the time it left Los Angeles, assuminig that it left Los Angeles at 5:25 P. M. of July 3, 1913. The reason Mr. Howard was in a position to hear the conversation that transpired between the yardmaster at Yuma and myself, over the wire, was that the dispatchers have a table almost as large as this one (pointing to a table in the courtroom). One instrument is attached to what is called the train wire over the entire division, and there is nobody touches that wire unless it is the train dispatcher or the chief dispatcher or the chief dispatcher authorizes it. The dispatcher is sitting there ready to send out orders at all times, or to sign up conductors' names to train orders or to put down these reports on the sheet here as the train goes by each station. Naturally, owing to the importance of the stock, this wire was used to convey the information to me, and I, being in the office [109—33] there, heard the first of the conversation, and, to be

(Testimony of William Wilson.)

frank, when they mentioned five cars of cattle, July fourth, I questioned as to what kind of a man would be doing shipping of cattle across the desert on July fourth, and I immediately came over there and used Mr. Howard's wire for the conversation and Mr. Howard took part of it himself. That is the way he knows. While one of us would be using the wire the other would be listening. If a shipper comes in and says I want to sign a release, a thirty-six-hour release to make a certain point, it is the duty of the agent to hand him the release.

[Testimony of Horace W. Howard, for Defendant.]

HORACE W. HOWARD, being called as a witness on behalf of the defendant and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—My name is Horace W. Howard. I live in Tucson, Arizona. On July 4, 1913, I was train dispatcher at Tucson for the Southern Pacific Company. I had jurisdiction over the road from Tucson to Yuma. Went on duty at eight o'clock in the morning and off at four in the afternoon. (Witness handed train sheet marked for identification "Defendant's Exhibit No. 6." I have seen this train sheet before. I had considerable to do with making it between eight in the morning and four in the afternoon of July 4, 1913. I put down most all of the figures which appear on this train sheet between eight in the morning and four in the evening. This is a correct record of the arrival of

(Testimony of Horace W. Howard.)

each and every train on the division between Yuma and Tucson on July 4, 1913. I kept all of this record between 8 A. M. and four P. M. of that day. While I was working there on July 4, 1913, I heard the conversation over the wire that took place, as related by Mr. Wilson, the witness who [110—34] preceded me, with reference to these five cars of cattle. The train came into Yuma at 11:30 in the morning and I reported to Mr. Wilson that they had five cars of stock for Phoenix, and Mr. Wilson gets in communication with Phoenix to find out whether they could handle these cattle and they said that they would have no connection. Then Mr. Wilson told me that they would have to be unloaded as Phoenix could not handle them—would have no train to handle the five cars of cattle on their arrival at Maricopa, but he suggested that they come on to Gila if this gentleman wished it, but he did not want to come so they had to be unloaded, as there would be no connection at Maricopa. I put down these figures here on this train sheet showing the time of arrival at Yuma. I was operating the train wire in my office. I was the only one who did handle it unless Mr. Wilson wanted to handle it.

Cross-examination.

By Mr. HAYES.—I am not now in the employ of the Southern Pacific Company. I have not been for two years. I have a pass from Tucson to Phoenix and return from the Southern Pacific Company—a trip pass. I expect the Southern Pacific Company

(Testimony of Horace W. Howard.)

to pay my hotel expenses here and they have paid a part of them. I think I heard all the conversation that transpired between Mr. Wilson and the Yuma and Maricopa agents, because I sat right there and I never left the office from eight in the morning until four in the afternoon. (Referring to train sheet.) I put down these figures here showing the arrival of the train at Yuma at the time this shows here or five or ten minutes after. I had been employed as a dispatcher for thirty-one years and a half. I had nothing to do with the running of trains on the Arizona Eastern Railroad from Maricopa to Phoenix. All [111—35] I had to do was to run the trains on the Southern Pacific between Tucson and Yuma.

Redirect Examination.

By Mr. HARTMAN.—I have not seen this train sheet from the time that I made it up until a few days ago. It has not been changed in any particular. These are my figures.

[Testimony of O. M. Shreeve, for Defendant.]

O. M. SHREEVE, being called as a witness on behalf of the defendant, and first duly sworn, testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—My name is O. M. Shreeve. Live at Maricopa, Arizona. Lived there about eight years. I was employed as telegraph operator for the Southern Pacific Company at Maricopa on July 4, 1913. (Witness shown document containing two

(Testimony of O. M. Shreeve.)

pages, marked for identification “Defendant’s Exhibit No. 9”.) I had a telegraphic conversation with the dispatcher at Tucson and with the dispatcher of the Arizona Eastern at Phoenix, Arizona, on July 4, 1913, with reference to these five cars of cattle. I kept a record of that conversation. This memorandum here that is marked for identification “Defendant’s Exhibit No. 9” is the record of that conversation that I made. I made this record at the time the conversation occurred. Refreshing my recollection from this memorandum, I will state the dispatcher at Tucson called me and told me to ask Phoenix if he could handle stock at ten-thirty or eleven P. M., and I asked Phoenix and he said no. The Tucson office then called me and said the man in charge of stock said he had a message from Gatter that they would handle on passenger train. I told Phoenix this and he said Gatter was expecting stock to come here at 6:00 P. M. [112—36]

Cross-examination.

By Mr. HAYES.—I did not wire to Mr. Gatter. I wired to the dispatcher at Phoenix. The dispatcher told me that Mr. Gatter expected the cattle to arrive at six P. M. I don’t know what Mr. Gatter said. I did not have any information from Phoenix that Mr. Gatter had arrived to handle this shipment on the passenger train. The information I had was that Mr. Gatter was expecting the stock to arrive at six P. M. at Maricopa. I obtained that information from the dispatcher at Phoenix. I am still in the

(Testimony of O. M. Shreeve.)

employ of the Southern Pacific Company at Maricopa. Also employed by the Arizona Eastern—both companies. I don't know what time the passenger train of the Arizona Eastern left Maricopa on the evening of July fourth, 1913.

[Testimony of A. R. Gatter, for Defendant.]

A. R. GATTER, being called on behalf of the defendant and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr HARTMAN.—I am now and was in July, 1913, general agent of the Arizona, Eastern and Southern Pacific Company, in Phoenix, Arizona. I know Mr. Frank R. Stewart, the plaintiff in this case. I knew him at that time. Also Mr. Field. I heard the testimony of Mr. Field here this morning. To the best of my memory no such conversation took place between Mr. Field and myself as related by Mr. Field. I did not on the part of the Arizona Eastern Railroad Company agree or promise to handle these cattle from Maricopa to Phoenix on a passenger train or any other way. Mr. Field came into my office several times prior to the arrival of these cattle. He came once with a letter from Mr. Stewart written from San Luis Obispo, if I remember correctly. I can't [113—37] recall the exact contents of the letter. As I remember, Mr. Stewart said in the letter that he was going to ship some cattle from San Luis Obispo to Phoenix and that he wanted to run through with them from Los Angeles

(Testimony of A. R. Gatter.)

to Phoenix. I don't remember exactly what I said, but I know that I never would have said that they could come through because I could not tell. At that time I did not know and Mr. Stewart did not know when they were coming. If they arrived at Maricopa in time to connect with our train we would have brought them through. As I recall it, Mr. Field told me that he was wiring Mr. Stewart at Yuma or would wire him at Yuma, or something to that effect.

Cross-examination.

By Mr. HAYES.—I heard Mr. Shreeve's testimony. I don't disclaim entirely having talked with Mr. Field about these cattle. It may have been on July 3d that I told the dispatcher that they would probably reach Maricopa along about six o'clock. That is the last I would have heard of the cattle until July 5th, as my office was closed all day on the fourth of July and I was not there. I don't disclaim having made some arrangement with Mr. Field, but it was not for any particular train except as they would get to Maricopa coming from Yuma, as I would not know when they would reach Maricopa, only guess-work as to when they left Los Angeles. I did not arrange with Mr. Field for the forwarding of these cattle on any passenger train, even if they had arrived in time. It would not be my duty to direct the making up of a train for this purpose or the holding of any train at Maricopa for this purpose. That would be the duty of the superintendent. I could not state definitely the schedule leaving time from

(Testimony of A. R. Gatter.)

Maricopa of our passenger train on July 4, 1913. It was somewhere in the neighborhood of about [114—38] eight o'clock in the evening. We have no train crews at Maricopa. All crews are in Phoenix. If we have a sufficient number of cars of livestock and other cars to make up a train at Maricopa we would arrange our schedule to handle them, but otherwise we would not.

[Testimony of William H. Francis, for Defendant.]

WILLIAM H. FRANCIS, being called as a witness on behalf of the defendant and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—I live at Tucson, Arizona. I am rate clerk for the Southern Pacific Company and Arizona Eastern Railroad Company. Occupied that position for over five years. I have had considerable experience in handling freight rates and the computation of freight rates. I have with me here the freight tariffs showing the rates in effect on July 1, 1913, San Luis Obispo, California, to Phoenix, Arizona.

It was here stipulated by counsel for the respective parties that in July, 1913, there was more than one rate in effect on livestock, on the lines of the Southern Pacific Company and its connecting carriers, from San Luis Obispo, California, to Phoenix, Arizona. That there was in effect at such time, in accordance with the tariffs, a sliding scale of rates based upon the valuation per head of the livestock.

(Testimony of William H. Francis.)

That if the cattle involved in this suit had been shipped on a higher valuation, a higher rate would have been assessed against such shipment, in accordance with such tariffs, and that the tariffs in effect provided for such different rates in accordance with the declared valuation as specified in the livestock shipping contracts. That such tariffs are and were on [115—39] file with the Interstate Commerce Commission.

(WHEREUPON, an adjournment was taken until 9:30 A. M., the following day.)

Hearing resumed at 9:30 A. M., October 28, 1915.

[Testimony of C. S. Norman, for Defendant.]

C. S. NORMAN, being called as a witness on behalf of the defendant and first duly sworn, was examined, and testified in substance, as follows:

Direct Examination.

By Mr. HARTMAN.—My name is C. S. Norman. Am freight agent for the Arizona Eastern Railroad Company at Phoenix and was so employed in July, 1913. I have had conversations in a business way with Mr. Stewart. I remember about this shipment of cattle made by Mr. Stewart which came in here on July 5, 1913. I was on duty at that time in my office. I did not state to Mr. Stewart on or about July 5, 1913, in the freight office of the Arizona Eastern Railroad Company, at Phoenix, Arizona, or at any other time or place, that he could take these cattle away from the Arizona Eastern Railroad Company's pens without paying the freight on them. I

(Testimony of C. S. Norman.)

did not at that time or at any other time or place authorize Mr. Stewart to unload those cattle and take them away from the pens without paying the freight. I did not hear anybody in my office connected with the Arizona Eastern Railroad Company, at that time and place or at any time and place, state to Mr. Stewart that he could take these cattle away without paying the freight. Mr. Christensen was my assistant at that time. His duties were those of assistant agent. He simply acted as my representative while I happened to be out of the office. It was either his duty or mine to collect the freight charges on shipments arriving at Phoenix. I made several efforts to get Mr. Stewart on the telephone but [116—40] it was two or three days later when we got into communication with him and he came to the office and the freight bills were presented to him and he refused payment for the reason stated that he had a claim against the railroad company for damages and it was his desire to make a settlement all at one time. I asked him why he had taken the cattle without paying the freight and his reply was that he thought it was best that he should take them. He stated that he had a claim against the carrier for damages, or words to that effect. I think that was within ten days of the time that he had taken the cattle. I had been trying to get him for two or three days over the telephone but that conversation took place the first day I could get in touch with him. He did not at that time hand me any written claim for damages. He did afterwards.

(Testimony of C. S. Norman.)

Cross-examination.

By Mr. HAYES.—It is our duty to collect all freight charges prior to delivery. It is our practice now to unload cattle into the stock-pens and lock the pens until the freight is paid. It was not our practice to do that at the time this shipment came in. The man in charge is supposed to load and unload all stock consigned to himself. The man in charge is not our agent. The contract calls for the loading and unloading by the shipper. We permit them to unload cattle in our stock-pens and then we lock the pens. I did not see this shipment. I could say positively that I was notified of this shipment prior to its arrival. It was the custom to do that. The notice would probably be that so many cars of livestock would arrive. I was instructed to collect the freight charges on five car loads. The sixth car was supposedly an overflow from the balance of the five cars. It is the custom of the road to [117—41] ship overflows without charge. Whenever it is deemed best by the carrier they have every right to do so. The carrier is not limited to the number of cattle it will ship in one car. I did not decline to permit Mr. Stewart to unload his cattle. I did not have the opportunity to decline to deliver the cattle to him at the Union stockyards here in Phoenix.

Redirect Examination.

By Mr. HARTMAN.—After this we made arrangements to unload and lock the corrals.

(Testimony of C. S. Norman.)

Recross-examination.

By Mr. HAYES.—It is our custom to demand payment of freight charges upon an injured animal.

[Testimony of Garfield Christensen, for Defendant.]

GARFIELD CHRISTIENSEN, being called as a witness on behalf of the defendant and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—I live in Phoenix. Am employed as chief clerk of the Arizona Eastern local freight office in Phoenix and was so employed on July 5, 1913, the same office that Mr. Norman is employed in. I know Mr. Frank R. Stewart, the plaintiff in this case. I did not state to Mr. Stewart on July 5, 1913, in the office of the Arizona Eastern, or at any time or place that he could take his cattle away from the pens without paying the freight on them.

Cross-examination.

By Mr. HAYES.—I did not see Mr. Stewart in our office at the time of the arrival of this particular shipment, on July 5, 1913. [118—42]

[Testimony of J. J. Casey, for Defendant.]

J. J. CASEY, being called as a witness on behalf of defendant, and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—I live here in Phoenix, Arizona. I have lived in and around Phoenix for thirty

(Testimony of J. J. Casey.)

years and am now and have been in the cattle business and farming for thirty-five years. I have had experience in shipping cattle and have shipped cattle over the Southern Pacific Company's lines through Yuma. I have been to Yuma. I have seen the cattle pens of the Southern Pacific Company at Yuma. I have had occasion to see and inspect and examine other cattle-pens in other places in Arizona and in the southwest, which are used for the purpose of unloading and feeding cattle.

Q. How do the cattle-pens of the Southern Pacific Company at Yuma compare with the cattle-pens at other places in Arizona, and in the southwest that you have seen and observed?

Objection to question by counsel for plaintiff as immaterial, which objection was sustained by the Court, and which ruling of the Court was then and there excepted to by counsel for defendant.

I believe I did see some of these cattle testified about by Mr. Stewart, which he shipped in here on July 5, 1913. I saw them at the Union Stockyards at Phoenix and some of them at a later time about three or four miles west of Phoenix. The cattle that I saw were in very poor condition—that is, no flesh, very poor in flesh.

Assuming that these cattle—152 head of dairy cows shipped from San Luis Obispo, California, on July 1, 1913, left San Luis Obispo about five o'clock in the afternoon and [119—43] were transported to Los Angeles, California, and there unloaded for feed and

(Testimony of J. J. Casey.)

rest on July 2d, 1913, and reloaded at Los Angeles on the evening of July 3, 1913, leaving there about five o'clock in the evening, having remained in the pens at Los Angeles for 26 or 27 hours, and having been fed and watered while in such pens, and arriving at Yuma the next morning, July 4th, at 10:35 A. M. Pacific time, or 11:35 A. M., Mountain time, after having been transported through the Southern California desert at that season of the year, and the weather being very hot at Yuma at the time of arrival at that place, the sun shining very hot, and the cattle having been unloaded from the cars immediately after arrival at Yuma, in the middle of the day, into the pens of the Southern Pacific Company used for that purpose at that time, for unloading and feeding, the pens having no shade over them, no sheds and no shade trees, and there being white sand on the ground in the pens mixed with manure, and there being plenty of water in the pens for the cattle to drink, the cattle not having had anything to drink since being loaded on the cars at Los Angeles, and after having been unloaded into the pens at Yuma, remaining there seven or eight hours and loaded into the cars again in the evening; and if shipping the cattle on from Yuma to Phoenix, without unloading them for feed or rest would have kept the cattle in the cars from thirty-three hours and thirty minutes to possibly thirty-six hours from the time they had been loaded on the cars in Los Angeles, and assuming that the cattle were loaded into regular, ordinary stock-cars used by railroad companies, with a cover

(Testimony of J. J. Casey.)

and with openings between the slats on the side; also assuming that the cattle had been milked twice while they remained in the pens at Los Angeles, it is my opinion that it was more humane and better for the cattle to [120—44] unload them at Yuma under those conditions and give them feed, water and rest, than to have transported them on from Yuma to Phoenix without unloading for feed, rest and water, especially these cows being milk cows and dairy cows and milking. I think it would have been better for the cows to have unloaded at Yuma. It seems to me that they were going too long a time since leaving San Luis Obispo without being milked oftener than they were. It does not look to me like they would be very good dairy cows after they got here. A dairy cow should be milked at least twice a day—twice in twenty-four hours. If we miss milking a cow once—once probably in some cases would not injure and in some cases it would. It affects all animals to go eighteen hours or longer without water in the hot weather. Shipping dairy cows from a cool climate, such as they have around San Luis Obispo, California, into Yuma, Arizona, in July, in the hot summer, would make the animals want more water, and it would be rather hard on them, I should think, coming from a cool climate into a hot climate. They would be more or less affected by the heat in my judgment. Cattle which are raised here in Arizona in the hot climate can stand the climate better than cattle which are brought in from a cool climate. Cattle which are brought in here from a cool climate

(Testimony of J. J. Casey.)

are affected more by the heat in the summer than cattle which are raised here. I know that cattle, and dairy cows in particular, going eighteen hours and thirty minutes without water would be longer than they ought to go without water, and I also think that not milking them for that length of time would be just as bad. I have shipped cattle to and through El Paso, Texas. I have seen the cattle-pens at El Paso, Texas, of the Southern Pacific Company and the other railroads there at that point. None of those cattle-pens there at El Paso, Texas, [121—45] have any sheds over them for shade.

Motion by plaintiff's counsel to strike the testimony of this witness with reference to there being no sheds over the cattle-pens at El Paso, Texas. Which motion was granted by the Court, and to which ruling defendant then and there excepted.

Q. Mr. Casey, how did the cattle-pens of the Southern Pacific Company at Yuma compare with the cattle-pens in other places of like climatic conditions, with reference to having sheds over them for shade?

To which question counsel for plaintiff objected for the reason that the same was not a comparative question and had no tendency to prove or disprove any issue. Which objection was sustained by the Court, and to which ruling by the Court counsel for defendant then and there excepted.

I never saw any cattle-pens with shade over them.

(Testimony of J. J. Casey.)

Cross-examination.

By Mr. HAYES.—I have been a dairy man for a good many years before I fed cattle. For the past several years I have been a cattle feeder—purchase cattle off the range and feed and finish them for the beef market. I have shipped feeder cattle, both cows and steers, into the valley from other points within the State to and around Phoenix. I have also shipped cattle out of the State. I have shipped beef cattle from Phoenix to Los Angeles. I never have shipped from Phoenix to Los Angeles without unloading. I have shipped cattle from Phoenix to Kansas City.

Redirect Examination.

By Mr. HARTMAN.—These cattle having been kept in the cars eighteen hours and ten minutes from Los Angeles to Yuma during that season of [122—46] the year, in the hot weather, I should judge that they would be feverish and dry in a general way. After being on the cars for that length of time without water in the hot weather, and if they were turned out and given too much water to drink it would have a bad effect on them, I should think, by drinking too much water. Frequently it has been my experience that cattle that drink too much water lay down and die in a very short time.

Recross-examination.

By Mr. HAYES.—I have made shipments of cattle during the summer-time. The largest shipment I ever made was made on the 23d of June.

[Testimony of George Davis, for Defendant.]

GEORGE DAVIS, being called as a witness for defendant, and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—I live at Phoenix at present. Have lived in and around Phoenix, about all my life, about 36 years. Am in the cattle business and cattle shipping business in this country. I have shipped a good many cattle in and out of Arizona. I have heard the hypothetical question propounded to Mr. Casey. Am familiar with the cattle-pens at Yuma, Arizona. In my opinion it was better to unload the cattle at Yuma than to have shipped them on to Phoenix without unloading for feed and rest. If the cattle are kept in the cars eighteen hours and ten minutes at that season of the year in that kind of a place and through that kind of a country, the necessary result would be, if you kept them on for a period of twenty-five to twenty-eight hours, that they would begin to get tired and lay down and the others would trample over them. As an average, when they run over that [123—47] period of time, the longer you keep them in the cars the more tired they get. They get very tired and they would want a drink of water very badly after having been on the cars eighteen hours. Cattle get feverish in the cars to a certain extent and it makes them want water being confined in the cars. The cattle would be better off out in the open, even though in the sun, where

(Deposition of George Davis.)

they had plenty of room to move around than they would be crowded up in the cars. Sand mixed with manure in the cars would not hurt the cattle. We use that for bedding the cars. Sand and manure is what we bed the cars with. It is soft. That is what the cattle stand on in the cars.

It was here stipulated by the parties by their respective counsel that the record show that the same questions were propounded to this witness as were propounded to the witness J. J. Casey, with reference to sheds over the cattle pens at Yuma and other places in Arizona and in the southwest, and the same objections made by counsel for plaintiff and the same rulings by the Court were made with respect thereto, and exceptions as to the rulings then and there made by counsel for defendant.

Cross-examination.

By Mr. HAYES.—I have been in the cattle business in and around Phoenix, Arizona, for the last twenty-eight years. I am in the dairy business now. My experience in shipping has been in shipping beef cattle in to the coast—gathering and shipping for others. I have never lived in Yuma. I was never there on the Fourth of July. I have been through there during the month of July. The effect of summer heat on loose sand naturally makes it warm. I could not say that standing in the hot sand would be restful to an animal. Assuming that the corrals at Yuma [124—48] were entirely unprotected from the rays of the sun and that the cattle were unloaded

[Testimony of George Davis, for Defendant.]

GEORGE DAVIS, being called as a witness for defendant, and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HARTMAN.—I live at Phoenix at present. Have lived in and around Phoenix, about all my life, about 36 years. Am in the cattle business and cattle shipping business in this country. I have shipped a good many cattle in and out of Arizona. I have heard the hypothetical question propounded to Mr. Casey. Am familiar with the cattle-pens at Yuma, Arizona. In my opinion it was better to unload the cattle at Yuma than to have shipped them on to Phoenix without unloading for feed and rest. If the cattle are kept in the cars eighteen hours and ten minutes at that season of the year in that kind of a place and through that kind of a country, the necessary result would be, if you kept them on for a period of twenty-five to twenty-eight hours, that they would begin to get tired and lay down and the others would trample over them. As an average, when they run over that [123—47] period of time, the longer you keep them in the cars the more tired they get. They get very tired and they would want a drink of water very badly after having been on the cars eighteen hours. Cattle get feverish in the cars to a certain extent and it makes them want water being confined in the cars. The cattle would be better off out in the open, even though in the sun, where

(Deposition of George Davis.)

they had plenty of room to move around than they would be crowded up in the cars. Sand mixed with manure in the cars would not hurt the cattle. We use that for bedding the cars. Sand and manure is what we bed the cars with. It is soft. That is what the cattle stand on in the cars.

It was here stipulated by the parties by their respective counsel that the record show that the same questions were propounded to this witness as were propounded to the witness J. J. Casey, with reference to sheds over the cattle pens at Yuma and other places in Arizona and in the southwest, and the same objections made by counsel for plaintiff and the same rulings by the Court were made with respect thereto, and exceptions as to the rulings then and there made by counsel for defendant.

Cross-examination.

By Mr. HAYES.—I have been in the cattle business in and around Phoenix, Arizona, for the last twenty-eight years. I am in the dairy business now. My experience in shipping has been in shipping beef cattle in to the coast—gathering and shipping for others. I have never lived in Yuma. I was never there on the Fourth of July. I have been through there during the month of July. The effect of summer heat on loose sand naturally makes it warm. I could not say that standing in the hot sand would be restful to an animal. Assuming that the corrals at Yuma [124—48] were entirely unprotected from the rays of the sun and that the cattle were unloaded

(Deposition of George Davis.)

into the pens in the middle of the day on July 4th, the pens being in the condition as described, loose sand and manure, certainly an animal coming out of a car would rest in such pens. It would be better than having them in the cars. At the present time I am not employed by anybody. I have never been in the employ of the Southern Pacific Company. I have frequently shipped cattle from Phoenix to Los Angeles without unloading. At times they went through all right. I could not say that every time.

Defendant offers in evidence the deposition of

[Deposition of Frank Witkosky, for Defendant.]

FRANK WITKOSKY, in substance as follows:

My name is Frank Witcosky, 27 years old, reside at San Luis Obispo, California, and am a cattle buyer. From February, 1906, to November, 1913, I was employed driving cattle in the county of San Luis Obispo, California. I saw one of these cows shipped by Mr. Stewart from San Luis Obispo. She could not travel with the others and had given out and fallen down on the road to San Luis Obispo. She was poor and weak and could not travel. In July, 1913, there was very little feed around San Luis Obispo on the range for cattle. There was no rain there that summer. It is hotter in Yuma and Phoenix, Arizona, in the month of July, than it is in San Luis Obispo.

Defendant then read in evidence the deposition of

[Deposition of Ed Peterson, for Defendant.]

ED PETERSON, in substance as follows:

My name is Ed Peterson, twenty-four years old, live in San Luis Obispo, California. My business is farming and dairying. I was so engaged in July, 1913. I helped to drive [125—49] some of these cattle into San Luis Obispo, into the cattle-pens of the Southern Pacific Company at that place. I was raised on a dairy ranch near San Luis Obispo, California, and have handled cattle for more than six or eight years. I examined and looked at these cattle shipped by Mr. Stewart at about the time they were shipped. The cattle were poor and weak. One of the cows fell down two or three miles before reaching the cattle pens at San Luis Obispo and she laid there and rested two or three hours and she was then driven into the pens where the other cattle were. The feed for stock around San Luis Obispo, where these cattle came from was dry and very short in July, 1913. No rain there that summer and very little feed.

Defendant offered and read in evidence the deposition of

[Deposition of Millard Peterson, for Defendant.]

MILLARD PETERSON, in substance as follows:

My name is Millard Peterson. Twenty-three years old. Reside at San Luis Obispo, California. Occupation farmer. I helped to drive these cattle into the cattle-pens at San Luis Obispo, California. I was raised on a cattle ranch. Have handled cattle

(Deposition of Millard Peterson.)

almost all my life. I examined and looked at these cattle shipped by Mr. Stewart. They were in very poor condition and weak. One of the cows gave out on the road after it had laid down a couple of times on the road and had to rest for several hours before we could get her to the railroad cattle pens in San Luis Obispo. Some of the cows were quite old. There was very little rain in 1913 in the country where these cattle came from. The only stock feed was grass and that was dry and very scarce and short.

Defendant offered and read in evidence the deposition of

[Deposition of F. D. Martin, for Defendant.]

F. D. MARTIN, [126—50] in substance as follows:

My name is F. D. Martin. Fifty-eight years of age. Reside in Los Angeles, California. I am corral keeper for the Southern Pacific Company at Los Angeles, California. Was so employed on July 2d and third, 1913. I unloaded, fed, watered and reloaded this shipment of cattle in Los Angeles. I made a record of the unloading and reloading of this shipment in a permanent volume kept by me, showing the time we began to unload the shipment and the time we began to reload the same. I now produce the original record that I made at the time of unloading and reloading this shipment, which the notary has marked exhibit "A." The cattle were unloaded at Los Angeles at 2:45 and 3:00 P. M. on

(Deposition of F. D. Martin.)

July 2, 1913, and were reloaded at 3:40 and 4:25 P. M. the following day, July 3, 1913, remaining in the pens in Los Angeles more than twenty-four hours. While the cattle remained in the pens in Los Angeles they were fed three times, had water in the troughs all the time and kept clean, so that the cattle were well cared for at Los Angeles.

Defendant offered and read in evidence the deposition of

[Deposition of M. E. McKirahan, for Defendant.]

M. E. McKIRAHAN, in substance as follows:

My name is M. E. McKirahan. Residence San Francisco, California. Business freight claim agent of the Southern Pacific Company. On July 1, 1913, and until March 31, 1915, inclusive, I was chief clerk to the Freight Claim Agent of the Southern Pacific Company, in offices located on the third floor of the Flood Building, San Francisco. Since April 1st, 1915, I have been freight claim agent of the Southern Pacific Company, same location. So far as any knowledge I had of any claim having been filed by Mr. Stewart for loss or damage to this shipment, or so far as any knowledge that the freight claim department of [127—51] the Southern Pacific Company had of any such claim the only claim that was filed was received by the Freight Claim Department on or about January 18, 1914.

Defendant here rested its case and the plaintiff offered the following testimony in rebuttal.

[Testimony of C. S. Norman, for Plaintiff (in Rebuttal).]

C. S. NORMAN, being called as a witness on behalf of the plaintiff in rebuttal, testified in substance as follows:

Direct Examination.

By Mr. HAYES.—I made a search of our records for the documentary evidence requested with reference to this shipment. I did not find anything in the way of advance notice that there was any damage to the livestock coming to Phoenix. I have some messages here which I will turn over to you. (Papers handed by witness to plaintiff's counsel.) I cannot find any advance notice of the arrival of this shipment. The notice of the number of cattle being shipped and the amount of freight charges required to be collected is contained in these way bills that accompanied the cattle to destination.

[Testimony of Frank R. Stewart, for Plaintiff (Recalled in Rebuttal).]

FRANK R. STEWART, being recalled as a witness on behalf of the plaintiff in rebuttal, was examined and testified in substance as follows:

Direct Examination.

By Mr. HAYES.—While at Yuma, Arizona with this shipment of cattle, and while in conversation there with the Agent he did not make any statement to me with respect to forwarding the shipment to Gila. Gilas was not mentioned. There was nothing said there at that time with respect to forwarding

(Testimony of Frank R. Stewart.)

this shipment any distance beyond Yuma. I am not acquainted with either Mr. [128—52] Ed Peterson or Millard Peterson or Frank Witcosky. Neither of these gentlemen to my knowledge had anything to do with assisting in driving these cattle into San Luis Obispo. I did not employ Witcosky in any capacity. No animal embraced in this shipment gave out in the course of driving into San Luis Obispo. We did not have any trouble with any animal other than the one which had its leg fractured while being dipped. I had more than one conference with persons purporting to be or representing themselves to be claim agents of the Southern Pacific Company. A gentleman called on me at Phoenix, stating his residence to be at San Francisco and further stated that he was claim agent of the Southern Pacific Company and took up the question of settlement or adjustment of my claim for damages. That was within four or five days from July 5, 1913. I would say I had two conferences with this agent. I also had conferences with the Arizona Eastern local representatives relative to the adjustment of this claim.

**[Testimony of Frank E. Whitten, for Plaintiff
(Recalled in Rebuttal).]**

FRANK E. WHITTEN, being recalled as a witness on behalf of plaintiff in rebuttal testified in substance as follows:

Direct Examination.

By Mr. HAYES.—These cows were driven in three

(Testimony of Frank E. Whitten.)

different bunches into San Luis Obispo, to the best of my knowledge. I was not acquainted with all the gentlemen who did the driving. I don't know Ed Peterson or Millard Peterson. Some people did some driving on some small bunches that I don't know. There was none of the cows gave out driving them into San Luis Obispo. I don't know the witness Witcosky. I heard all the conversation that transpired between the Yuma Station Agent, Mr. Stewart, Mr. Ford and myself, relative to the forwarding of [129—53] this shipment from Yuma. No proffer was made by the agent to forward this shipment from Yuma to Gila. The station Gila was not mentioned.

Cross-examination.

By Mr. HARTMAN.—I did not assist in driving any cattle into San Luis Obispo myself, but I was there when they all came in. I don't know who drove in the small bunches.

[Testimony of James Ford, for Plaintiff (Recalled in Rebuttal).]

JAMES FORD, being recalled as a witness on behalf of plaintiff in rebuttal was examined and testified as follows:

Direct Examination.

By Mr. HAYES.—I helped drive part of these cattle into San Luis Obispo. I have forgotten how many were in that bunch. I am acquainted with two Peterson boys, brothers that used to live out there. No person by the name of Peterson had anything to

(Testimony of James Ford.)

do with driving these cattle into San Luis Obispo. There was not any cattle which gave out on the way except one that had her leg fractured and that I know was left behind. I was present at Yuma during the entire conversation there with the Agent relative to unloading these cattle. The Station Agent at Yuma did not make any statement or proposition with reference to forwarding this shipment to Gila, Arizona. The word Gila was not mentioned in my knowledge. There was no proposition made to transport the cattle to any intermediate point between Yuma and Phoenix.

Cross-examination.

By Mr. HARTMAN.—The Peterson boys may have helped drive some of those other bunches of cattle in, I don't know about that. I didn't [130—54] see them at the stockyards. I was not along with the other bunch of cattle.

[Testimony of Vernon Ford, for Plaintiff (in Rebuttal).]

VERNON FORD, being called as a witness on behalf of plaintiff in rebuttal and first duly sworn, was examined and testified in substance as follows:

Direct Examination.

By Mr. HAYES.—I am the son of James Ford. Am eighteen years old. I assisted in driving some of these cattle into San Luis Obispo. I don't know Ed Peterson. I know Millard Peterson. I don't know Witcosky. No strangers had anything to do with driving any of the cattle into San Luis Obispo,

(Testimony of Vernon Ford.)

the particular cattle which I assisted in driving.

WHEREUPON, both parties rested and the foregoing, including the exhibits as set forth herein, constitutes all the testimony and evidence in the case.

THEREUPON, and before the Court charged the jury, and before argument, the defendant submitted its motion in writing for a directed verdict in its favor, and that in case said motion be denied it have leave to go to the jury; which motion for a directed verdict was denied by the Court. To which ruling of the Court defendant then and there excepted.

WHEREUPON, and before the Court charged the jury, the plaintiff requested the following instructions:

[Instructions to the Jury Requested by Plaintiff.]

“1. The law prohibits a carrier engaged in interstate transportation of livestock, from confining the animals for a longer period than twenty-eight consecutive hours without unloading them in a humane manner into properly equipped pens for rest, feed and water for a period of at least five consecutive hours, unless prevented from doing so by some accidental [131—55] or unavoidable cause. The law further provides that the owner or agent in charge of any shipment, may by written request separate and apart from the shipping contract, extend the time for which the animals may be confined to a period of thirty-six hours.

Charge No. 1 was not given by the court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge.

“2. It is as much the duty of such carrier to unload in a humane manner, and into properly equipped pens, as it is his duty not to confine the animals for a period of time in excess of twenty-eight hours without written request of the shipper extending the time, and if you believe from the evidence in this case, that the defendant did not have properly equipped feed and rest pens at the station of Yuma, having in mind the climatic condition prevailing at Yuma at the time of such unloading, and that the defendant unloaded plaintiff's cattle into such improperly equipped feed and rest pens, and that the cattle were injured and damaged thereby, then the defendant is liable to the plaintiff for all such damage and injury.

Charge No. 2 was not given by the Court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge.

“3. If you believe from the evidence in this case, that the plaintiff orally offered to sign and deliver to the defendant, a release extending the time for which said shipment could be confined to the period of thirty-six hours, and that defendant's agent stated to him that such release could not be accepted, and that he had no other alternative but to unload, then such conduct on the part of the plaintiff and defendant constitutes a tender of such release, and the

plaintiff was not required to formally prepare and deliver to the defendant's agent, his release in writing. You are instructed that it is a general rule, that when the tender of performance of an act is necessary to establishment of a right against another party, this tender of offer to perform is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.

Charge No. 3 was not given by the Court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge. [132—56]

"4. If you believe from all the evidence in this case, that the defendant was negligent in the handling and transportation of plaintiff's cattle, and that such negligence amounted to wanton and willful misconduct on the part of the defendant, then you may disregard if you like, the limitation of valuation fixed in the livestock shipping contract, in estimating plaintiff's damages for the death of his cattle, if you find that any were killed, and find for plaintiff in whatever amount you believe from the evidence to be the actual value of the cattle so killed.

Charge No. 4 was not given by the Court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge.

"5. If you believe from all the evidence in this case, that the defendant was negligent in the handling and transportation of plaintiff's cattle, and that such negligence amounted to wanton and willful misconduct on the part of the defendant, then I instruct

you that you are at liberty to award to plaintiff punitive or exemplary damages, not however to exceed to sum of one thousand dollars (\$1000) the amount asked for in his complaint, in addition to such sum as you may find as compensatory damages for the actual loss and damage sustained.

Charge No. 5 was not given by the Court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge.

“6. If you believe that eighty-seven head of plaintiff’s cattle or any lesser number were damaged as set forth in plaintiff’s complaint and as a result of the negligent handling and transportation of his cattle by the defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars (\$20) per head, the amount alleged in plaintiff’s complaint, and I further instruct you that in arriving at the damage suffered by plaintiff, you may consider the market value of the cattle in their normal and healthful condition, of the grade and quality of plaintiff’s cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and [133—57] you may then consider the price for which plaintiff sold his cattle in their injured condition if you find from the evidence the cattle were injured and the difference in their market value in their normal condition and their value in their injured condition, is a proper measure of plaintiff’s damages.

“7. If you believe from the evidence in this case, that the defendant had actual knowledge of the

damage and injuries to plaintiff's cattle, then no notice in writing of such damage and injury was required to be furnished the defendant by the plaintiff.

Charge No. 7 was not given by the Court and therefore must not be made a part of the record on appeal.

WM. H. SAWTELLE,

Judge.

"8. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff's shipment was moving, into which plaintiff's cattle could have been unloaded within the twenty-eight hour period and in a more humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant's positive duty to transport said cattle to such station for unloading."

WHEREUPON, at the close of the evidence, and before the Court charged the jury, the defendant requested the following instructions:

[Instructions to Jury Requested by Defendant.]

"1. If you believe from the evidence that at the time the cattle mentioned in plaintiff's complaint, arrived at Yuma, Arizona, on the line of railroad operated by the defendant, they had been confined in the cars approximately nineteen hours, without feed and rest, and that plaintiff did not tender to or file with defendant or any of its agents any written request separate and apart from any printed bill of lading or other railroad form, authorizing defendant to confine said animals in said cars for a period of thirty-six hours from the time they had been loaded

into such cars; and that defendant could [134—58] not or was not reasonably sure of transporting said animals from said town of Yuma, in said cars, to Phoenix, Arizona, the place of destination, without confining said animals in said cars for a longer period than twenty-eight hours, then your verdict should be in favor of the defendant.

“2. If you believe from the evidence that at the time said animals arrived at Yuma, Arizona, they had been confined in the cars approximately nineteen hours without feed or rest, and that at said time and place plaintiff tendered to or filed with defendant or its agents, a written request authorizing defendant to confine said animals in cars without feed or rest for thirty-six hours from the time they had been loaded; and you also believe that the Arizona Eastern Railroad Company, the connecting carrier of this defendant, notified defendant *that* the time said animals so arrived at Yuma, or shortly thereafter that it the said Arizona Eastern Railroad Company could not handle said shipment of cattle from Maricopa to Phoenix and get them to Phoenix, the place of destination, within thirty-six hours from the time they had been loaded, then you are instructed that plaintiff cannot recover and your verdict should be in favor of defendant.

“3. If you believe from the evidence that at the time said cattle arrived at Yuma, Arizona, defendant was willing and offered to transport said animals to the station of Gila on its said line of railroad, and there unload said animals for feed and rest, instead of unloading same at Yuma, and that plaintiff refused

to allow said animals to be so transported to said station of Gila, or declined to accept or accede to defendant's said offer to transport said animals to said station of Gila, then you are instructed to find in favor of the defendant. [135—59]

"4. If you believe from the evidence that at the time said animals arrived at Yuma, Arizona, they had been confined in the cars approximately nineteen hours without feed and rest, and that it was more humane and better for said cattle to unload them at Yuma for feed and rest than to transport them beyond that point and keep them confined in said cars, then your verdict should be in favor of the defendant.

"5. If you believe from the evidence that it was less injurious to said animals to unload them at Yuma for feed and rest than to have kept them confined in said cars for nine hours or eighteen hours longer, then you should find for the defendant.

"6. If you believe from the evidence that plaintiff made and entered into with defendant the written contracts as pleaded by defendant, providing that in case *of* any loss or damage should be sustained to said animals in said shipment for which defendant would be liable, that plaintiff should make written demand on defendant within ten days after unloading said animals at destination; and that it was possible for plaintiff to have made such demand within such time, then you are instructed that plaintiff cannot recover *fro* any loss or damage to any of the animals so delivered at destination; but you are further instructed that as to any animals that may

have died in transit, or at destination while the same were still in the possession of the railroad company, plaintiff was not required to give such notice.

“7. Defendant has pleaded that the animals mentioned in plaintiff’s complaint were transported by it and its connecting carrier under three certain contracts in writing, the execution of which contracts plaintiff has admitted.

These contracts provide, among other things, that in case [136—60] any loss or damage resulted to said animals in transporting same, for which defendant would be liable, the plaintiff would within ten days after unloading same at destination, make written demand upon defendant therefor, and that in the event of failure to make such written demand within such time that all claims for such loss or damage were expressly waived and made void.

You are instructed that such a provision is reasonable and that if it were possible for plaintiff to have given such notice within such time and he did not do so, then you are instructed that plaintiff cannot recover of defendant for any loss or damage to any of the animals delivered to him at destination; but that said provision as to such notice does not apply to any animals that may have died in transit or at destination before being taken away from unloading pens at destination.

“8. If you believe from the evidence that any of the animals mentioned in plaintiff’s complaint died within ten days after unloading at destination and that plaintiff did not make written demand upon defendant or any of its agents within ten days after

such unloading for loss or damage to such animals, then you are instructed that plaintiff cannot recover anything for such animals.

“9. If you believe from the evidence that plaintiff knew, or could have known by the exercise of reasonable diligence, within ten days after unloading said animals at destination that eighty-seven head of said animals were injured or damaged in the sum of twenty dollars per head, as alleged by plaintiff, and plaintiff did not, within ten days after unloading said animals at destination make written demand upon defendant or any of its agents for such alleged loss or damage, then you [137—61] are instructed that plaintiff cannot recover for such alleged loss and damage.

“10 If you believe from the evidence that plaintiff could, within ten days after unloading said animals at destination, have given written notice to defendant or any of its agents, of any of the loss or damage to any of the animals, for which plaintiff is seeking to recover, and that he did not give such notice within such time, then you are instructed that plaintiff cannot recover for any of the alleged loss or damage to said animals, for which he could have given such notice, but you are further instructed that plaintiff was not required to give such notice as to any animals that may have died in transit or at destination before being removed from unloading pens.

“11. If you believe from the evidence that plaintiff, at the time said animals were delivered by him to defendant, at San Luis Obispo, California, for transportation by defendant, over its line of railroad

and the line of railroad of its connecting carrier to Phoenix, Arizona, made and entered into the contract or contracts in writing, as set forth and pleaded by defendant, wherein and whereby it was agreed and stipulated by and between plaintiff and defendant that the agreed valuation of said animals was the sum of thirty dollars per head; and that plaintiff, by reason of said stipulation that the value of said animals was the said sum of thirty dollars per head, thereby obtained lower and cheaper freight rates for the transportation of said animals from San Luis Obispo, California, to Phoenix, Arizona, than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; and that plaintiff by said contracts stipulated and agreed that in case any loss or damage should be sustained to said animals for which defendant would be liable, that the amount [138—62] to be claimed by plaintiff for each of said animals, so lost or damaged should be adjusted on the basis of the value of such animals at the time and place of said shipment, to wit, on July 1st, 1913, at San Luis Obispo, California; not exceeding the declared and agreed value thereof, to wit, the sum of thirty dollars per head; and you further find that the loss and damage to plaintiff's said animals, as alleged, was caused by the negligence of defendant as alleged by plaintiff, to wit, the unloading of said animals at Yuma, Arizona; then you are instructed that plaintiff cannot in any event, recover herein, any greater sum for the animals that died in transit or before being removed from pens at destination; then

the said sum of thirty dollars per head and the freight charges on same; and you are further instructed that plaintiff's claim for the animals alleged to have been injured in such transportation should be adjusted on a basis of said declared and agreed valuation of thirty dollars per head and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona; and that if said animals after delivery at destination to plaintiff were of the value of thirty dollars per head, and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona, plaintiff is not entitled to recover anything for any of said animals alleged to have been injured.

"12. If you believe that the freight tariffs of the defendant and its connecting carrier, with reference to rates applicable to transportation of livestock from San Luis Obispo, California, to Phoenix, Arizona, in July, 1913, were on file with the Interstate Commerce Commission, and posted and published; and that such tariffs provided for different rates of freight on livestock between such points, based upon declared or agreed valuation; and that at such time said tariffs provided for all higher freight rate on such livestock if a greater value [139—63] than thirty dollars per head should be fixed or placed upon such animals; then you are instructed that plaintiff is charged with knowledge of such higher rate and was bound to know that such higher freight rate was in effect, when he made this shipment.

"13. You are instructed that if the contracts

pleaded by defendant were fairly made and entered into between plaintiff and defendant, and said contracts recite on their face that the consideration therefor was a reduced rate for transportation of said animals, then you are instructed that the law presumes that a *fari* consideration was given and such consideration need not be proven.

“14. You are instructed that the law requires a shipper of livestock, or any other property, by railroad, from a point in one State to a point in another State, to pay to the carrier, so transporting such property, the full, correct amount of freight charges for such transportation, in accordance with the tariffs of such carriers filed with the Interstate Commerce Commission and posted and published, and in effect at time of such shipment; and if you believe from the evidence that plaintiff has not paid to defendant or to its connecting carrier such freight charges on the shipment of cattle involved herein, then you are instructed that plaintiff is not entitled to recover.

“15. If you believe from the evidence that the alleged loss and damage to plaintiff's animals was due to any other cause than unloading them at Yuma, Arizona, then you are instructed that plaintiff cannot recover and your verdict should be in favor of defendant.

“16. If you believe that at the time plaintiff shipped his said animals from San Luis Obispo, California, they were in a poor weak or starved condition, and that any of the loss or [140—64] damage

to said animals, as alleged by plaintiff was due to the condition of said animals at the time they were so shipped then you are instructed that plaintiff cannot recover herein of defendant, for such loss or damage.

“17. If you believe from the evidence that plaintiff caused said cattle to be brought from a cool and moist climate into Arizona, in July, and into an extremely hot and dry climate, and that plaintiff knew of the climatic conditions then existing in Arizona, and the place or places to which he caused said animals to be transported; and any of the alleged loss or damage to said animals was due to such climatic conditions, then you are instructed that plaintiff cannot recover of defendant for such loss or damage.

“18. You are instructed that if plaintiff failed or neglected to attend to unloading his cattle at Yuma, or failed or neglected to properly care for his said cattle while they were at Yuma, and that any of the alleged loss or damage was due to such failure on the part of plaintiff to attend to and care for said cattle, that defendant is not liable therefor and plaintiff cannot recover for any such loss or damage.

“19. You are instructed that plaintiff cannot recover of defendant for any loss or damage to his cattle resulting from heat or climatic conditions, and if you believe that the alleged *lossoor* damage to plaintiff's cattle was due to the heat at Yuma, or to the climatic conditions at that place, then your verdict should be in favor of the defendant.

“20. You are instructed that plaintiff cannot recover anything from defendant in this action on

account of the alleged injuries and damages to the eighty-seven head of cattle mentioned in plaintiff's complaint.

"21. You are further instructed, as a matter of law, that [141—65] plaintiff is not entitled to recover anything in this action, from defendant, for punitive or exemplary damages.

WHEREUPON, the Court charged the jury as follows:

Instructions of Court to Jury.

"Gentlemen of the Jury: This is an action brought by Frank R. Stewart against the Southern Pacific Company to recover from said defendant company the sum of \$2,695, compensatory damages and one thousand dollars punitive or exemplary damages for alleged damage and injury to stock shipped by the plaintiff over the lines of the defendant company from San Luis Obispo, California, to Phoenix, Arizona. The defendant, in its answer, denies substantially all of the allegations of the plaintiff's complaint, and in addition thereto, sets up certain matters of defense; thereupon the plaintiff has filed a reply to defendant's answer and special pleas. The complaint, answer and reply have all been read at length in your presence and hearing and I deem it unnecessary at this time to again read them. While it is the province of the Court to deal with the law of the case, it is exclusively your province to pass upon the facts. It is your duty to consider the evidence in the case as a whole, and not to give undue importance to minor points or portions of the evidence

taken piecemeal. Any case involving much testimony and many facts should not be decided upon the probability or improbability of any point singled out of the evidence, but a proper decision requires due consideration to be given to all the evidence, direct and circumstantial, in the case.

I charge you that you are made by law the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have testified in the case, and of the weight you will give to the testimony of the several witnesses who have appeared before you. In determining the credibility [142—66] of any witness and the weight you will give to this testimony, you have the right to take into consideration his manner and appearance while giving his testimony, his means of knowledge, any interest or motive he may have, if shown, and the probability or improbability of the truth of his statements, when considered in connection with the other evidence in the case. If you believe that any witness has wilfully sworn falsely to any material fact, then you have the right to wholly disregard the testimony of such witness, except in so far as his statements may be corroborated by other credible evidence in the case and by the facts and circumstances proven in the case. It will be your duty in arriving at a verdict in this case to be governed by the evidence in the case, and the law as herein given you, regardless of the condition of the parties hereto, financially, or of the effect of your verdict upon the parties, or either of them. You are to look at the evidence in this case in a common sense light, and to judge it by that ex-

perience and observation of human affairs of which you are possessed as individual members of society, and to endeavor to arrive at the truth as the evidence shows it to be.

By burden of proof, wherever used in these instructions is meant this: That the party upon whom the burden of proof devolves must prove or make out his contention by a preponderance of the evidence. It is the duty of the plaintiff in this case to make out his case by a preponderance of the evidence. The expression, "preponderance of the evidence," means the greater weight of the evidence. It does not necessarily mean that a greater number of witnesses shall be produced upon one side or the other, it means the more convincing proof or the greater probability of the truth of the evidence on one side when compared with, or weighed against, the evidence in opposition. [143—67]

You are instructed that direct evidence is not the only evidence which may be considered by the jury. In many cases, circumstantial evidence is both admissible and competent for the consideration of the jury. In arriving at a verdict in this case, as heretofore stated, it is your duty to consider all of the evidence, both direct and circumstantial. Circumstantial evidence is proof of certain facts and circumstances in a given case from which the jury may infer other and connected facts, which usually and reasonably follow, according to the common experience of mankind.

You will observe, gentlemen, that among the allega-

tions in the plaintiff's complaint, is one to the effect that the alleged loss of and injury to the cattle of the plaintiff, was a direct and proximate result of negligent conduct on the part of the defendant company, its agents and employees, in handling and transporting the shipment. In other words, this particular allegation charges negligence on the part of defendant. By negligence is meant the want of reasonable or ordinary care which, under the same conditions and circumstances, would be exercised by persons of ordinary prudence and foresight. Negligence may consist of an act or of failure to act. It is, therefore, such an act as a person of ordinary care, under existing conditions and circumstances, would not do, or such a failure to do something which, under existing conditions and circumstances, a person of ordinary care would have done; or, as the Supreme Court of the United States has said: "Negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation or doing what such person, under existing circumstances, would not have done. The essence of the fault may lie in omission or commission. The duty is dictated and [144—68] measured by the exigencies of the occasion." The law prohibits a carrier engaged in interstate transportation of livestock, from confining the animals for a longer period than twenty-eight consecutive hours without unloading them in a humane manner into properly equipped pens for rest, feed and water for a period of at least five consecutive hours, unless prevented from doing

so by some accidental or unavoidable cause. The law further provides that the owner or agent in charge of any shipment may, by written request separate and apart from the shipping contract, extend the time for which the animals may be confined to a period of thirty-six hours.

In order to enable you to determine whether or not the negligence of the defendant above referred to caused the death of or injury to, any of the cows, you may also take into consideration all evidence with reference to the previous history and condition of the said cows, the climatic conditions, where they were raised and shipped from, their physical condition at the time of shipment, whether or not they had been well cared for and fed in Los Angeles, California, previous to such shipment, the condition of the weather with respect to temperature at the time they were shipped from Los Angeles and at the time they arrived at Yuma, the condition of the cattle when they arrived at Yuma before they were there unloaded, their ages and weights, the condition of their health and strength and all the other facts and circumstances of the trip surrounding and in any way affecting the class and condition of said cattle. It is claimed by the plaintiff that the cattle in question were loaded in defendant's cars the afternoon of July 3, 1913, at Los Angeles, California; that they were transported over defendant's line to the town of Yuma, in the State of Arizona, arriving at the latter place about [145—69] 10:00 o'clock, Mountain Time, or 9:00 o'clock, Pacific Time, the morning of July 4, 1913. As you know, there is a dispute be-

tween the parties as to the time the cattle left Los Angeles and as to the time they arrived at Yuma. Where there is a conflict in the testimony, it is the duty of the jury to reconcile that conflict if they can, so as to make all the witnesses speak the truth. If they cannot do so, then it is for them to determine which of the witnesses they will believe; in other words, the credibility and weight of the testimony is a matter exclusively within the jury's province.

It is also claimed by the plaintiff that upon the arrival of the train at Yuma the defendant company, through its agents, requested the plaintiff, who was accompanying said cattle, to unload the same for rest, feed and water; and that the plaintiff declined to unload said cattle at Yuma, giving as a reason that the cattle were in good condition and that it would seriously injure them or kill them to unload them in the hot sun into the uncovered pens and corrals of the defendant at Yuma.

Plaintiff further claims that he offered to execute and deliver to the defendant company a "written request," extending the period of time within which the cattle might be confined in the cars from twenty-eight to thirty-six consecutive hours. You have heard the testimony on that question—that subject, and I deem it my duty to pass upon the sufficiency of that offer or tender. I charge you as a matter of law that the plaintiff upon arrival of the cattle at Yuma had the right to tender to the defendant such written request for such extension of the time of confinement of the cattle in such cars; and that had he in fact so tendered such written request it would then have

been the duty of the defendant company to have transported the cattle on to Phoenix, Arizona, provided the [146—70] same could have been so transported and delivered at their destination within thirty-six hours from the time the train containing the shipment originally left Los Angeles, California. But, the plaintiff having failed to sign and tender such written request, the defendant company was required by the United States Statute to unload, feed, water and rest the said cattle at some point on its line of railroad within twenty-eight hours from the time the same left Los Angeles, California.

I further charge you that it was the duty of the defendant company to unload the cattle for feed, rest and water into pens properly equipped therefor. The statutes of the United States make it the duty of the railroad company to do that. You have heard all the evidence in the case, and it is for you and you alone to determine whether or not the corrals and pens provided by the defendant company at Yuma were such as the law requires railroads to furnish for the proper unloading, feeding and resting and watering of cattle. I say for the proper unloading, feeding, and resting and watering of the cattle. In passing upon this question, you may take into consideration the season when the cattle arrived at Yuma, the climatic conditions thereat at the time, and all of the other facts and circumstances in the case. In this same connection, you may also determine whether or not there was on said 4th day of July, 1913, any other place or station on defendant's line which the train carrying these cattle, and operating on its usual

schedule, could have reached within the twenty-eight hour period, at which the cattle could have been unloaded, fed, watered, and rested under conditions more favorable than existed at said town of Yuma on July 4, 1913. If you find from the evidence that the defendant had other corrals on its line [147—71] of road and in the direction in which plaintiff's shipment was moving, into which plaintiff's cattle could have been unloaded within the twenty-eight hour period and in a more humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant's positive duty to transport said cattle to such station for unloading.

If you find that the corrals or stock pens of the defendant company at Yuma were "properly equipped for the unloading of cattle for feed, water and rest," and that said company used due diligence in the unloading, handling and care of the stock at Yuma, then the defendant would not be liable to the plaintiff for any loss or injury to any of the said cattle.

On the other hand, if you find that the said corrals or stock-pens of the defendant company at Yuma were not properly equipped for the unloading of cattle for feed, water and rest, or that the stock were not humanely handled at Yuma, by the defendant company, its employees, or agents, and further believe from the evidence that as a result of such improperly equipped stock-pens, or of such inhumane handling of said cattle, any of them died or were injured, then and in that event, the defendant would be liable in damages for the value of such of the cattle

as died, not exceeding, however, the sum of thirty dollars per head for each animal so dying, and also for any injury which may have been caused to any of the remaining cattle, not exceeding the sum of twenty dollars per head for each animal so injured. In other words, in order that you may understand, at the time the plaintiff delivered the cattle to the defendant company at San Luis Obispo, California, to be transported to Phoenix, Arizona, he executed a contract in writing, by the terms of which he placed a valuation of thirty dollars per head on said cattle and in which contract or agreement he agreed [148—72] “That the amount to be by him claimed for each animal . . . so lost or damaged shall be adjudged on basis of value at time and place of shipment, not exceeding the declared value as hereinbefore set forth . . . and in no event is there to be any recovery . . . for any loss of or damages to said livestock, from whatsoever cause arising in excess of the declared value hereinbefore set forth.” The defendant company also pleads that notwithstanding the fact that it may have been guilty of negligence in the particulars set out in the complaint, nevertheless the plaintiff in this case cannot recover, because the contract heretofore referred to (and which was signed by the plaintiff, and by Mr. Ford, and Mr. Whitten, on behalf of the plaintiff, who were thereunto duly authorized) provides that the “second party hereby further agrees that in case of any loss or damage shall have been sustained for which first party is liable, demand or claim for such loss or damage will be made by the second party on the freight claim agent

of the first party in writing within ten days after unloading of the livestock; and that in event of failure so to do, all claims for loss or damages in the premises are hereby expressly waived, released and made void” Defendant alleges that no claim for loss or injury to said cattle was presented to it, or any of its agents or employees within the ten-day period. If you find this to be true, then, of course, the plaintiff cannot recover, unless you further find that the defendant waived this provision of the contract, or that the plaintiff was relieved from a compliance therewith as is hereinafter stated. The plaintiff in reply to this contention, that the claim should have been presented in writing within ten days after the unloading of the livestock, alleges that he was relieved from compliance with the above-quoted provision in that “on the 4th day of [149—73] July, 1913, and at all times subsequent to the arrival of said cattle at . . . Yuma. (I say subsequent to the arrival of at Yuma), the defendant had full knowledge and notice of the injuries and damages to plaintiff’s cattle as set forth in its said complaint; that said cattle were unloaded by the defendant into its stock-pens at the station of Yuma between the hours of 9 and 10 o’clock A. M., on the 4th day of July, 1913, and between said dated and the hour of 7:30 P. M. of said day, and prior to the reloading of the cattle into defendant’s cars, five of said cows died . . . That upon reloading the said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen

of the crippled and sick cattle of the plaintiff to their destination at Phoenix; that at various points between said station of Yuma and the city of Phoenix the train officials in charge of said shipment received telegraphic inquiries from other officials of the defendant inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week; and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the plaintiff's cows which arrived at the destination alive, were such as to render it impossible for the plaintiff, or any person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained by the plaintiff within the said ten-day period; that a number of said cattle [150—74] died many days after their arrival at Phoenix, Arizona, as the result of such injuries . . . that the defendant has on many occasions prior to the 21st of October, 1913, recognized plaintiff's right to recover in some amount on account of his damages, sustained, as set forth in his said complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff." I repeat these allegations of the reply in order to show what the plaintiff claims is his reason or

excuse for not having presented his claim in writing to the defendant company or its agents within ten days from the date of such loss or injury, as is provided by the contracts.

I charge you as a matter of law that if you believe the defendant or its agents or employees did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in plaintiff's complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the provisions of said contracts. The written contracts introduced in evidence limit the liability of the defendant company to thirty dollars for each animal injured or killed, and if you find for the plaintiff you should assess the damages at not exceeding thirty dollars per head for the cattle killed and not exceeding twenty dollars per head, the amount claimed in plaintiff's complaint, for the injury caused to each of said cattle by the defendant's negligence. The measure of damages in case of injury to the cattle under the contract is the amount of actual damages to each of said cattle so injured, resulting from the negligence of the defendant, its agents or employees, in no case to exceed twenty dollars per head. The measure of [151—75] damages as to those that were killed is not exceeding thirty dollars per head. A shipper will not be heard to claim or recover for damages or loss, however

great, in excess of the amount claimed in the bill of lading as the agreed value; nor will the carrier be allowed to deny liability for actual damages up to that amount, except, as in this case, where a less amount is claimed in the complaint, which in this case is twenty dollars per head for each of the cattle injured and not killed. The carrier must respond for negligence up to that value, but no further. If you come to the conclusion that the plaintiff is entitled to recover some damages, then, as I have heretofore stated, the measure of his damages for the eleven head of cattle that died, if you believe they died as a result of the defendant's negligence, would be not exceeding thirty dollars per head, and the measure of damages for the cattle that were injured by reason of the defendant's negligence would be the difference between the market value of the said cattle in their normal condition after making the trip from San Luis Obispo, California, to Phoenix, Arizona, and the condition in which they were actually delivered at Phoenix, but in no event can such injury or damage to each cow be placed at a figure in excess of twenty dollars; in other words, in arriving at the damages, if any, to be awarded to the plaintiff by reason of the cattle injured, if any, through the negligence of the defendant company, the measure of such damages will be the depreciation in the market value of the cattle by reason of such injury or injuries, such damages, in no event, however, to exceed the sum of twenty dollars per head. If you believe that eighty-seven head of the plaintiff's cattle or any

lesser number were damaged as set forth in plaintiff's complaint, and as a result of the negligent handling and transportation of the [152—76] cattle by defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the damage suffered by the plaintiff you may consider the market value of cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition, if you find from the evidence that the cattle were injured, and the difference in their market value in their normal condition and their value in their injured condition is a proper measure of plaintiff's damages, as I said before, not exceeding twenty dollars per head for the cattle injured.

If, under all the facts of this case and the law as I have stated it to you, you come to the conclusion that the plaintiff is entitled to recover some amount as compensation for the loss of, or injury to, his said cattle, you must *no* render what is known as a "quotient verdict"—that is, you must not add together the amount of the sums which each of you believes the plaintiff is entitled to, and divide by twelve, or any other number. Such or any similar method of arriving at plaintiff's compensation, would be unlawful, and the Court would be compelled to set aside the verdict.

If, under the rules I have stated, you find that the plaintiff is entitled to recover in this action, the amount of the recovery, if any, is for you to determine from all the facts in the case and under the limitations which the law imposes, as already stated to you. It is for you to say, in the exercise of a sound discretion, from all the facts in the case, without fear and without favor, without passion or prejudice, [153—77] what amount of damages, if any, should be awarded.

You are further instructed, as a matter of law, that plaintiff is not entitled to recover anything in this action, from defendant, for punitive or exemplary damages, but only damages for the death or loss of the cattle that died not exceeding thirty dollars per head and the injury to the eighty-seven head not exceeding twenty dollars per head, and you may, if you think proper, and if you find for the plaintiff,—find that the defendant was negligent in the manner set forth in plaintiff's complaint—also assess the sum of twenty dollars expended by the plaintiff, if you believe it was so expended, in the nursing and caring for the cattle in question.

Some testimony has been introduced with reference to the failure of the plaintiff to pay the freight charges on the cattle upon their arrival at Phoenix. I do not see how this question or this testimony affects the question as to whether or not the defendant company was guilty of negligence in the manner as alleged in plaintiff's complaint, although this testimony was introduced without objection of counsel; and if you believe that the defendant was negligent,

under the definition of that term, in the handling of the cattle, and believe that the plaintiff is entitled to recover, then you will render a verdict for the plaintiff, notwithstanding the fact, if it be a fact, that upon the arrival of the cattle at Phoenix, the plaintiff did not pay the freight charges before taking possession of the cattle. In other words, gentlemen, I think that is an issue to be tried in another lawsuit and not in the one now being tried.

If you find for the plaintiff, the form of your verdict will be, "We, the jury, duly empanelled and sworn in the above-entitled cause, upon our oaths, do find for the plaintiff and [154—78] assess his damages at . . . dollars," inserting the amount which you determine should be awarded him.

If you find for the defendant, the form of your verdict will be, "We, the jury, duly empanelled and sworn in the above-entitled cause, upon our oaths do find for the defendant."

After you have retired to your jury-room, you will select one of your number as foreman, and after you have arrived at a verdict, if you arrive at one, you will cause your foreman to sign the verdict which represents your conclusions, and return it into court. During the progress of this case you have been allowed to separate. From now on, you will be kept together in charge of the bailiff, during which time you should not communicate the state of your deliberations to anyone, not even to the bailiff, nor to the Court, nor to anyone at all. What transpires in your room should be kept secret until your verdict is returned to the Court, if you arrive at one, or until you

are discharged by order of the Court. Should you fail to arrive at an agreement within a reasonable time, the Court will endeavor to have provision made for your luncheon being furnished you.

[Defendant's Exception to Action of Court in Refusing to Give Certain Instructions.]

THEREUPON, and before the jury retired, the defendant excepted to the action of the Court in refusing to give each of the defendant's instructions numbers 1 to 20, and also excepted to the action of the Court in giving plaintiff's requested instructions, as follows:

"6. If you believe that eighty-seven of the plaintiff's cattle or any lesser number were damaged as set forth in plaintiff's complaint and as a result of the negligent handling and transportation of his cattle by the defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, [155—79] and I further instruct you that in arriving at the damage suffered by plaintiff, you may consider the market value of cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition if you find from the evidence the cattle were injured, and the difference in their market value in their normal condition and their value in their injured condition, is a proper measure of plaintiff's damages.

“8. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff’s shipment was moving, into which plaintiff’s cattle could have been unloaded within the twenty-eight hour period, and in a more humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant’s positive duty to transport said cattle to such station for unloading.”

THEREUPON, and before the jury retired, the defendant then and there excepted to that portion of the Court’s charge with reference to transporting the cattle to another station than Yuma, as follows: “In this same connection you may also determine whether or not there was on said 4th day of July, 1913, any other place or station on defendant’s line which the train carrying these cattle, and operating on its schedule, could have reached within the twenty-eight hour period, at which the cattle could have been unloaded, fed, watered and rested, under conditions more favorable than existed at said town of Yuma on July 4, 1913. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff’s shipment was moving, into which plaintiff’s cattle could have been unloaded within the [156—80] twenty-eight hour period and in a more humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant’s positive duty to transport said cattle to such station for unloading.”

Upon the grounds that it was shown by the evidence that plaintiff abandoned his cattle at Yuma; that the defendant was not reasonably sure of being able to transport the cattle on to Gila or to any other station within the twenty-eight hour period; and upon the ground that it was better and more humane to unload the cattle at Yuma, as was done, than to transport them on to any other station; and upon the ground that it would have been a violation of the twenty-eight hour law, the Federal Statute, to have attempted to take them to any other station.

Defendant also then and there excepted to that portion of the Court's charge with reference to the defendant being liable for unloading the cattle into improper pens or for any other alleged negligent unloading of the cattle, upon the ground that it was the duty of plaintiff to care for said cattle and to assist in unloading and reloading said cattle, under the contracts made and entered into between plaintiff and defendant with reference to the shipment.

The defendant also then and there excepted to that portion of the Court's charge with reference to a certain clause in the shipping contracts in evidence, providing for the ten days' notice to be given by plaintiff to defendant of the alleged loss or damage claimed by plaintiff as to the eighty-seven head sued for in the complaint as follows: "The defendant company also pleads that notwithstanding the fact that it may have been guilty of negligence in the particulars set out in the complaint, nevertheless the plaintiff in this action cannot [157—81]

recover, because the contract heretofore referred to (and which was signed by the plaintiff, and by Mr. Ford and Mr. Whitten, on behalf of the plaintiff, who were thereunto duly authorized) provides that the 'second party hereby further agrees that in case of any loss or damage shall have been sustained for which first party is liable, demand or claim for such loss or damage will be made by the second party on the freight claim agent of the first party in writing within ten days after unloading of the livestock; and that in event of failure so to do, all claims for loss or damages in the premises are hereby expressly waived, released and made void.' Defendant alleges that no claim for loss or injury to said cattle was presented to it, or any of its agents or employes within the ten-day period. If you find this to be true, then, of course, the plaintiff cannot recover, unless you further find that the defendant waived the provision of the contract, or that the plaintiff was relieved from a compliance therewith as is hereafter stated. The plaintiff in reply to this contention, that the claim should have been presented in writing within ten days after the unloading of the livestock, alleges that he was relieved from compliance with the above-quoted provision, in that 'on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at . . . Yuma—(I say, subsequent to the arrival of said cattle at Yuma), the defendant had full knowledge and notice of the injuries and damages to plaintiff's cattle as set forth in its said complaint; that said cattle were unloaded by the defendant into its stock-pens at the station of Yuma

between the hours of 9 and 10 o'clock A. M., on the 4th day of July, 1913, and between said dates and the hour of 7:30 P. M. of said day, and prior to the reloading of the cattle into defendant's cars, five of said cows died . . . That upon reloading the [158—82] said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen of the crippled and sick cattle of the plaintiff to their destination at Phoenix; that at various points between said station of Yuma and the city of Phoenix the train officials in charge of said shipment received telegraphic inquiries from other officials of the defendant inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week; and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the plaintiff's cows which arrived at the destination alive, were such as to render it impossible for the plaintiff or any person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained by the plaintiff within the said ten-day period; that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of

such injuries; . . . that the defendant had on many occasions prior to the 21st of October, 1913, recognized plaintiff's right to recover in some amount on account of his damages, sustained as set forth in his said complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff.' I repeat those allegations of the reply in order to show what the plaintiff claims as his reason or excuse for not having presented his claim in writing to the defendant company or its agents within ten days from [159—83] the date of such loss or injury, as is provided by the contracts. I charge you as a matter of law that if you believe the defendant or its agents or employees did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in the plaintiff's complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the said provisions of said contracts."

Because it was not shown by the evidence that the defendant ever waived the giving of such notice, and because it is shown by the evidence that plaintiff knew within ten days after receiving the cattle at Phoenix that he had a claim for damages against the defendant, and that he knew or should have known the condition of the cattle at that time, and also on the ground that the defendant did not waive the giving of such notice by the negotiations testified to in the evidence as to a compromise.

The defendant also then and there excepted to that portion of the Court's charge with reference to the clause in the livestock shipping contracts in evidence providing for an agreed valuation of thirty dollars, and particularly in its application to plaintiff's claim of twenty dollars per head, alleged injuries and damages to the eighty-seven head mentioned and referred to in plaintiff's complaint, as follows: "The written contracts introduced in evidence limit the liability of the defendant company to thirty dollars for each animal injured or killed, and if you find for the plaintiff you should assess the damages at not exceeding thirty dollars per head for the cattle killed and not to exceed twenty dollars per head, the amount [160—84] claimed in plaintiff's complaint, for the injury caused to each of said cattle by the defendant's negligence. The measure of damages in case of injury to the cattle under the contract is the amount of actual damages to each of said cattle so injured, resulting from the negligence of the defendant, its agents or employees, in no case to exceed twenty dollars per head. The measure of damages as to those that were killed is not exceeding thirty dollars per head. A shipper will not be heard to claim or recover for damages or loss, however great, in excess of the amount claimed in the bill of lading as the agreed value; nor will the carrier be allowed to deny liability for actual damages up to that amount, except, as in this case, where a less amount is claimed in the complaint, which in this case is twenty dollars per head for each of the cattle injured and not killed. The carrier

must respond for negligence up to that value, but no further. If you come to the conclusion that the plaintiff is entitled to recover some damages, then, as I have heretofore stated, the measure of his damages for the eleven head of cattle that died, if you believe they died as a result of the defendant's negligence, would be not exceeding thirty dollars per head, and the measure of damages for the cattle that were injured by reason of the defendant's negligence would be the difference between the market value of the said cattle in their normal condition after making the trip from San Luis Obispo, California, to Phoenix, Arizona, and the condition in which they were actually delivered at Phoenix, but in no event can such injury or damage to each cow be placed at a figure in excess of twenty dollars; in other words, in arriving at the damages, if any, to be awarded to the plaintiff by reason of the cattle injured, if any, through the negligence of the defendant company, the measure of such damages will be [161—85] the depreciation in the market value of the cattle by reason of such injury or injuries, such damages in no event, however, to exceed the sum of twenty dollars per head. If you believe that eighty-seven head of the plaintiff's cattle or any lesser number were damaged as set forth in plaintiff's complaint, and as a result of the negligent handling and transportation of the cattle by defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the

damage suffered by the plaintiff you may consider the market value of cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition, if you find from the evidence that the cattle were injured, and the difference in their market value in their normal condition and their value in their injured condition is a proper measure of plaintiff's damages, as I said before, not exceeding twenty dollars per head for the cattle injured."

Upon the grounds that it was shown by the evidence that the said eighty-seven head of cattle were worth more than thirty dollars per head after having received the alleged injuries and after arrival at destination and because it is not proper to adjust the damages by taking the difference between the market value in their normal condition after arriving in the Salt River Valley and their value in which the cattle were delivered in Phoenix, and because it was provided in the contract that any loss or damage or injury for which the defendant might be liable should be adjusted upon the basis of the market value at the point of shipment, San [162—86] Luis Obispo, California, not exceeding the declared value of thirty dollars per head.

Defendant then and there also excepted to that portion of the Court's charge referring to the non-payment of the freight charges by plaintiff, as fol-

lows: "Some testimony has been introduced with reference to the failure of the plaintiff to pay the freight charges on the cattle upon the arrival at Phoenix. I do not see how this question or this testimony affects the question as to whether or not the defendant company was guilty of negligence in the manner as alleged in plaintiff's complaint, although this testimony was introduced without objection of counsel; and if you believe that the defendant was negligent, under the definition of that term, in the handling of the cattle, and believe that the plaintiff is entitled to recover, then you will render a verdict for the plaintiff, notwithstanding the fact, if it be a fact, that upon the arrival of the cattle at Phoenix, the plaintiff did not pay the freight before taking possession of the cattle. In other words, gentlemen, I think that is an issue to be tried in another lawsuit and not in the one now being tried."

Upon the ground that the contracts under which the cattle were shipped provided that the plaintiff was not entitled to receive from the railroad company and the railroad company was not bound to deliver to plaintiff any of his cattle without payment of the freight charges. [163—87]

Defendant's Exhibit No. 4.

(Copy of livestock shipping order contract and bill of lading executed by Frank R. Stewart, dated San Luis Obispo, July 1, 1913, covering 60 head of the cattle involved in the shipment.) [164—88]

Defendant's Exhibit No. 5.

(Being livestock shipping order contract and bill

of lading executed in the name of Frank E. Whitten, dated San Luis Obispo, California, July 1, 1913, which is identical with defendant's Exhibit No. 4, with the exception that it covered 62 head of cattle, shipped in two of the cars involved in this shipment.)

Defendant's Exhibit No. 2.

(Being livestock shipping order contract and bill of lading executed in the name of James Ford, dated San Luis Obispo, California, July 1, 1913; which is identical with defendant's Exhibit No. 4, with the exception that it covered 30 head of cattle shipped in one of the cars involved in this shipment.)

Defendant's Exhibit No. 6 [Night Letter—Frank R. Stewart to R. H. Fields, July 3, 1913].

“Western Union.

“Night Letter.

“Received at

195 GSO. 45 NL.

SP Colton, Cal. July 3, 1913.

R. H. Fields,

37 West Adams St., Phoenix.

Left Los Angeles on two forty-four at five thirty this evening. Expect to reach Yuma at eight in the morning and Maricopa six o'clock tomorrow evening. Will make the run without unloading. Arrange to have us taken up on passenger train tomorrow evening without fail.

FRANK R. STEWART

1227 a. m.” [165—89]

A. H. RISING,

GENERAL FREIGHT AGENT,
SOUTHERN DIST.--PACIFIC SYSTEM,

SAN FRANCISCO, CAL.

No...

Stat

July 1 - 1913

191

hereby acknowledged.

Conscience

Phoenix, Ariz.

Destination

If consignee fails for any cause to take delivery of this shipment for a period of five days after arrival thereof at destination, or at any other intermediate point in course of transit, the Southern Pacific Company or its agent is hereby authorized to sell shipment at public auction to the highest bidder, five days after sending notice to shipper by telegraph, of such intent to sell because of such failure to take delivery, unless within five days after sending said notice consignee or owner pay charges and take delivery thereof.

Page

Witness.....**Frank R. Stewart**

Page Witness: **Frank R. Stewart.** Shipper: _____

AGREEMENT made at the station and on the date above named, by and between Southern Pacific Company, hereinafter called first party, and the person whose signature appears above as shipper, hereinafter called second party.

whereas, said party transports live stock under certain rates, rules, and conditions as prescribed in General Freight Department Circular C. P. D. No. 1886, supplements thereto and reissues thereof; and known as "Rules and Regulations governing the Transportation of Live Stock," and that such agreement is to be performed, and in accordance with the transportation of live stock hereinbefore entered into, first party hereby undertaking to transport for second party certain live stock hereinafter described, at the rate of \$..... per..... head of cattle or horses, and \$..... per head of sheep and swine, as follows: so far as concerns car or cars in which com-

*If but one animal in shipment load shipments are made the rate

'PER CAR' may be shown.

if more than one, "PER LOT," except that when car

[illegible][illegible]

First party heretofore that it has received at the station and on the date first above written, from second party, certain live stock as hereinafter described to be transported as aforesaid at the rate or rates and subject to the second party, or order or assigns, subject to the conditions hereinafter and hereinafter expressed, on the surrender of this instrument and payment of transportation charges, as aforesaid. It is further expressly understood and agreed by second party that the live stock hereinafter referred to is to be transported on the party subject to all terms and conditions herein set forth, and issued by the General Freight Department of first party, namely: (1) Cattle & P. D. 1382; sheep thereto and releases thereto; and known as "Rules and Regulations Governing the Transportation of Live Stock." (2) All drawings at any time thereafter issued by said General Freight Department of first party, and (3) the Rules and Regulations governing the transportation of live stock.

T. F. Delaney
Agent Southern R.

Agent Southern Pacific Company.

ORIGINAL

SOUTHERN PACIFIC COMPANY
PACIFIC SYSTEM

LIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF LADING

SPECIAL AGREEMENT

Executed by _____
at _____ Station, Date _____ 191____
for _____ car _____ of _____ good for transportation of _____

Billing agent
stamp here.

From _____ to _____
when accompanying the stock herein described and not otherwise.
This Contract must be presented to Agent at _____ for renewal

RELEASE FOR MAN OR MEN IN CHARGE

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge other than the sum stipulated therein, for the carriage of the live stock mentioned therein, the undersigned in charge do hereby, voluntarily, assume all risk of accident or damage to his (or their) person or property, and do hereby release and discharge the said carrier or carriers from every and all claim, liability and demand of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned as in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers or any of its or their employees or otherwise.

Signature of man
(or men) in charge

(Agent will draw and through agents not needed)

The man or men who may be entitled to return transportation free or at a reduced rate under carriers' rules in effect, published and posted as required by law, at time this contract was executed, will upon surrender of this contract to the carriers' agent, receive ticket or tickets for the return journey.

TIME OF LOADING

Rested at _____ 191____ Hour _____ m.
Date arrived _____ Hour _____ m.
Date dep't _____ Hour _____ m.

Name of Consignor

TIME OF ARRIVAL AT _____ (Destination) _____ 191____ Hour _____ m.

TIME OF UNLOADING

_____ 191____ Hour _____ m.
Agent _____

VALUATION

Ordinary Live Stock will be received for transportation under the form of contract appearing upon the other side of this paper, subject to the following additional conditions: Shipments of Live Stock moving between points in Oregon will be received for transportation under the conditions of the "Low Value Live Stock Contract" and "Special Value Live Stock Contract."—(Uniform Live Stock Contract prescribed by the Railroad Commission of Oregon.) Rates as shown in the tariffs of this Company apply only on Ordinary Live Stock, that is, the actual ante and declared value of which does not exceed:

Each Horse or Pony (Gelding, Mare or Stallion), Mule or Jack, \$100.00
Each Colt (under 1 year) _____ 50.00
Each Ox, Bull or Steer _____ 50.00
Each Cow _____ 30.00
Each Calf _____ 10.00
Head of Hog _____ 10.00
Each Sheep or Goat _____ 8.00
Range Cattle, each animal _____ 30.00

Values in excess of the foregoing will be considered extraordinary, and such Extraordinary Live Stock will be received and forwarded by this Company only under the form of Contract above mentioned and subject to increased charges as compared with Ordinary Live Stock, as follows:

When actual and declared value exceeds that of Ordinary Live Stock, as shown above, by
100 per cent or less, increase the charge on each 10 per cent
200 per cent or less, increase the charge on each 20 per cent
300 per cent or less, increase the charge on each 30 per cent
400 per cent or less, increase the charge on each 40 per cent
500 per cent or less, increase the charge on each 50 per cent
600 per cent or less, increase the charge on each 60 per cent
700 per cent or less, increase the charge on each 70 per cent
800 per cent or less, increase the charge on each 80 per cent
900 per cent or less, increase the charge on each 90 per cent
1000 per cent or less, increase the charge on each 100 per cent

Charge on animals of greater value in like proportion, but in no case will greater charge be made for other animals than for a horse of same valuation.

INSTRUCTIONS

Shippers or their agents must acquaint themselves with the rules and regulations governing the transportation of Live Stock as per G. F. D. Circular 188-E, supplements thereto and reissues thereof, and known as "Rules and regulations Governing the Transportation of Live Stock," and the terms of said form of contract above mentioned.

ATTENDANTS

Attendants accompanying Live Stock to destination and returning under conditions and rules of this Contract and Bill of Lading, also Circular G. F. D. No. 188-E, supplements thereto and reissues thereof, will be cared for as follows:

With 1 carload of Live Stock 1 man may accompany free, but not return free.

With 2 to 5 carloads _____ 1 man may accompany and return free
With 6 to 10 carloads _____ 2 men may accompany and return free
With 11 or more carloads _____ 3 men may accompany and return free

When more than one carload of stock is shipped account of one owner from different stations to one destination, on same train, man or men may accompany as per above, and will be entitled to return free as follows:

One man to the station where the second car was placed in train.
One additional man to the station where the sixth car was placed in train.

One additional man to the station where the eleventh car was placed in train.

Transportation will be furnished to persons in charge of sheep, Hogs, Goats and Calves in DOUBLE-DECK CARS ON BASIS OF TWO SINGLE-DECK CARS as equivalent to one double-deck.

RECEIPT

FOR THE

RETURN TRANSPORTATION

FURNISHING ORIGINAL OR SUBSTITUTED LIVE STOCK ATTENDANTS

Received Ticket, Form _____ No _____ Date _____
1 _____ To _____
Signature _____

Slim	O Light Eyes O
Medium	O Dark Eyes O
Stout	O Light Hair O
Short	O Dark Hair O
Medium	O Gray Hair O
Tall	O Mustache O
Young	O Chin Beard O
Middle-Aged	O Side Beard O
Elderly	O Full Beard O
	No Beard O

Received Ticket, Form _____ No _____ Date _____
2 _____ To _____
Signature _____

Slim	O Light Eyes O
Medium	O Dark Eyes O
Stout	O Light Hair O
Short	O Dark Hair O
Medium	O Gray Hair O
Tall	O Mustache O
Young	O Chin Beard O
Middle-Aged	O Side Beard O
Elderly	O Full Beard O
	No Beard O

Received Ticket, Form _____ No _____ Date _____
3 _____ To _____
Signature _____

Slim	O Light Eyes O
Medium	O Dark Eyes O
Stout	O Light Hair O
Short	O Dark Hair O
Medium	O Gray Hair O
Tall	O Mustache O
Young	O Chin Beard O
Middle-Aged	O Side Beard O
Elderly	O Full Beard O
	No Beard O

SUBSTITUTED ATTENDANT

Received Ticket, Form _____ No _____ Date _____
_____ To _____
Signature _____

Slim	O Light Eyes O
Medium	O Dark Eyes O
Stout	O Light Hair O
Short	O Dark Hair O
Medium	O Gray Hair O
Tall	O Mustache O
Young	O Chin Beard O
Middle-Aged	O Side Beard O
Elderly	O Full Beard O
	No Beard O

SUBSTITUTED ATTENDANT

In case it becomes necessary for one of the persons in charge to leave train en route, substituting another in his place, such substitution must be made in presence of the Agent at station at which it occurs, who will cancel original signature and description and see that those of the substitute are properly affixed.

At _____ Substitutes _____
_____ Agent _____

Slim	O Light Eyes O
Medium	O Dark Eyes O
Stout	O Light Hair O
Short	O Dark Hair O
Medium	O Gray Hair O
Tall	O Mustache O
Young	O Chin Beard O
Middle-Aged	O Side Beard O
Elderly	O Full Beard O
	No Beard O

SOUTHERN PACIFIC COMPANY
PACIFIC SYSTEM
LIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF
SPECIAL AGREEMENT

LIVE STOCK SHIPPING ORDER CONTRACT AND BILL OF LADING

PACIFIC SYSTEM

SOUTHERN PACIFIC COMPANY

Entered by

Station, Date *191* *cur. of* *good for transportation of*

When accompanying the stock herein described and not otherwise, to _____

RELEASE FOR MAN OR MEN IN CHARGE

in consideration of the carriage of the undersigned upon a freight train of cars or carriers named in the within contract, without charge other than usual stipulated thereon, for the carriage of the live stock mentioned therein, undersigned in payment of freight, voluntarily, assume all risk of accident or injury to their persons, goods, and property, and hereby release and discharge carriers and their employees from all liability to pay damages for loss of or injury to any kind, and pay for the undersigned in charge of stock, and for the same be caused by the negligence of the said carriers or their employees or otherwise.

Witness
(Agent's name and address in full)

(or agent in charge)
Signature of man

The man or men who may be entitled to return transportation free or at a reduced rate under carriers' rules in effect, published and posted as required by the carrier, at the time this contract was executed, will upon surrender of this contract to the carriers' agent, receive ticket or tickets for the return journey.

TIME OF LOADING

.....191.....Hour.....m.

Departments, Hours

Name of Consignee
<i>TITLE OF ARRIVAL AT.</i>

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**Defendant's Exhibit No. 7 [Portion of Train Sheet,
Dated July 4, 1913].**

(Being train sheet dated July 4, 1913. For the sake of brevity, abstracted and only that portion of said train sheet as is relevant herein included in this bill of exceptions, as follows:

“Second 244.

Ar Yuma	11:35 a. m.
L Yuma	12:40 p. m.
L Patio	12:50
L Dome	1:47
L Welton	2:24
L Mohawk	3:40
L Aztec	4:28
L Sentinel	5:55
L Piedra	6:05
Ar Gila	7:20
L Gila	7:50
L Estrella	9:44
Ar Maricopa	10:45 [167—90]

**[Order Granting Defendant Sixty Days to Prepare
and File Bill of Exceptions, etc.]**

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

MINUTE ENTRY OF ORDER.

Upon stipulation of counsel on both sides herein, it is ordered that the defendant be given sixty days from this date within which to prepare and file its bill of exceptions herein, and that stay of execution be granted to the defendant for the same period.
[168—91]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

And now, in furtherance of justice and that right may be done, the defendant presents the forgoing as its bill of exceptions in this case and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

Dated this 15th day of December, A. D. 1915.

FRANCIS M. HARTMAN,

J. C. FOREST,

Attorneys for Defendant. [169]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Notice of Filing Bill of Exceptions.

To the Above-named Plaintiff, and to P. H. Hayes,
Esq., Phoenix, Arizona, His Attorney:

You and each of you will hereby please take notice that the defendant in the above-entitled cause, desiring and intending to prosecute a writ of error from the judgment of the above-entitled court in the above-entitled cause entered on the 29th day of October, 1915, has prepared and this day filed in the office of the clerk of the above-entitled court, for presentation to the Honorable William H. Sawtelle, the Judge who tried the above-entitled case, its bill of exceptions, copy of which is this day served upon you.

Dated this 15th day of December, A. D. 1915.

FRANCIS M. HARTMAN,

J. C. FOREST,

Attorneys for the Defendant.

Service of the above and foregoing notice accepted and also receipt acknowledged for a copy of defendant's bill of exceptions therein referred to this 16th day of December, 1915.

HAYES & LANEY,

Attorneys for Plaintiff. [170]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Order Settling Bill of Exceptions.

The foregoing bill of exceptions is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein.

Dated this 3d day of January, A. D. 1916.

WM. H. SAWTELLE,

Judge.

[Endorsements]: No. 142 — Phoenix. In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Bill of Exceptions. Filed Jan. 11, 1916, at —M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [171]

*In the United States Circuit Court for the Ninth
Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,
Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error.

Assignment of Errors.

Now comes the Southern Pacific company, by its attorneys, and says:

That in the record and proceedings herein in the United States District Court for the District of Arizona there is manifest error, to the great prejudice of the Southern Pacific Company, in this, to wit:

1. That the said Court erred in sustaining the objection of counsel for defendant in error, plaintiff below, on the ground that the same was immaterial, to the following question propounded to the witness J. J. Casey, by counsel for plaintiff in error, defendant below: "Q. How do the cattle-pens of the Southern Pacific Company at Yuma compare with the cattle-pens in other places in Arizona and in the southwest that you have seen and observed?"

For the reason that said witness had already testified that he had resided in Arizona for thirty years and had been engaged in the cattle business and farming for twenty-five years; had had experience in shipping cattle into and out of Arizona and over the line of the Southern Pacific Company's railroad through the town of Yuma, and had seen and inspected the cattle-pens of the Southern Pacific Company at Yuma and had seen and inspected the cattle-pens in other places in Arizona and in the southwest used for the purpose of unloading and [172] feeding cattle in the course of transportation by railroad, and because the witness would have testified, if he had been permitted to do so, that the cattle-pens

of the Southern Pacific Company at Yuma, and being the cattle-pens in question in this lawsuit, were just as good and as properly equipped as other pens in Arizona and in the southwest used for unloading and feeding cattle in the course of transportation by railroads, and that the cattle-pens of the Southern Pacific Company at Yuma were properly equipped; and because said testimony was material in view of the allegations of plaintiff's complaint wherein he alleges that the cattle-pens of the said Southern Pacific Company at Yuma were not properly equipped; and for the reason that plaintiff in error, defendant below was not required to maintain at the said town of Yuma cattle-pens equipped any differently or any better than cattle-pens at other places in Arizona and in the southwest similarly situated. [173]

2. The Court erred in sustaining the motion made by counsel for defendant in error to strike out the answer made by the witness J. J. Casey, as follows: "Q. State whether or not those pens at El Paso, Texas, have any sheds over them for shade. A. No, sir; they have not."

For the reason that the witness had testified that he had shipped cattle through El Paso, Texas, by railroad; had unloaded cattle into the cattle-pens of the Southern Pacific Company at El Paso, Texas, and had also seen the cattle-pens at El Paso, Texas, of other railroad companies;

For the reason that the testimony was material in view of the issues raised by the pleadings, and in view of the contention of defendant in error that the

cattle-pens of the Southern Pacific Company at Yuma were not properly equipped because they did not have sheds over them. [174]

3. Said Court erred in sustaining the objection made by counsel for defendant in error, on the ground that the same was immaterial, to the following question propounded to the witness J. J. Casey by counsel for plaintiff in error: "Q. Please state whether or not the cattle-pens of the Southern Pacific Company at Yuma compared favorably or are practically the same with reference to there being no sheds for shade for the cattle as the cattle-pens of the railroads at Tucson, Bowie and Phoenix, Arizona, El Paso, Texas, and Indio, California, places similarly situated and having the same climatic conditions as Yuma, Arizona?"

For the reason that the witness would have testified in answer to said question, if he had been permitted to do so, and plaintiff in error expected to elicit from the witness in answer to said question that the cattle-pens of the Southern Pacific Company at Yuma compare favorably with and were equipped practically the same as the cattle-pens at the other places named and which were similarly situated and having the same climatic conditions as Yuma, Arizona, and that none of such pens at such other places, so similarly situated, had sheds over them for shade, and that the cattle-pens of the Southern Pacific Company at Yuma were properly equipped; and for the reason that said testimony was material in view of the issues raised by the pleadings,

and in view of the contention by defendant in error that said cattle-pens were not properly equipped because they did *no* have sheds over them for shade.
[175]

4. The Court erred in sustaining the objection made by counsel for defendant in error, on the ground that the same was immaterial, to a certain question propounded to the witness, Charles Davis, by plaintiff in error, as follows: "Q. Did you ever see any cattle-pens with sheds over them in this country?"

For the reason that the witness had testified that he had lived in and around Phoenix, Arizona, for all his life, about thirty-eight years, had shipped a great many cattle out of Arizona and into California, and through the town of Yuma; that he was familiar with the cattle-pens of the Southern Pacific Company at Yuma; and for the reason that the witness would have testified in answer to said question, if he had been permitted to do so, and plaintiff in error expected to elicit from said witness, by said question, that he had never seen any cattle-pens with sheds over them in this country; and for the reason that said testimony was material in view of the issues involved in the action and in view of the contention of defendant in error that the cattle-pens of the Southern Pacific Company at Yuma were not properly equipped because they did not have sheds over them.
[176]

5. The said Court erred in denying and refusing to grant the motion made by plaintiff in error, de-

fendant below, at the close of the testimony, for a directed verdict in its favor:

For the reason that it was necessary for plaintiff in error to unload the cattle at Yuma, in order to comply with the federal act known as the Twenty-eight Hour Law; and for the reason that plaintiff is basing his claim for damages in this action upon the fact that the cattle were unloaded at Yuma instead of transporting them on to Phoenix, Arizona, their destination.

For the reason that the defendant in error, plaintiff below, abandoned his said cattle at Yuma, upon arrival at that place and refused to have anything further to do with them and refused and neglected to care for said cattle.

For the reason that the evidence also showed that the defendant in error had taken proper care of said cattle at Yuma, Arizona, they would not have suffered any damage or injury.

For the reason that the evidence also showed that all of the alleged loss, injury and damage to said cattle was caused wholly and solely by the gross negligence, fault and want of care of the defendant in error himself.

For the reason that the undisputed evidence showed that if any loss, injury or damage occurred to said cattle the same was due to the fact that plaintiff caused said cattle to be shipped from a cool, moist climate, into an extremely hot and dry climate on the 4th of July, 1913.

For the reason that the undisputed evidence showed that if any loss or damage occurred to said

cattle, the same was due wholly and solely and entirely to the climatic conditions, for which plaintiff in error was not liable or responsible. [177]

For the reason that the undisputed evidence showed that the defendant in error, plaintiff below, knew at the time he shipped the cattle the climatic conditions then existing at Yuma, Arizona, and selected the time for such shipment, and for which plaintiff in error was not liable.

For the reason that the undisputed testimony showed that prior to or at about the time the cattle were shipped from San Luis Obispo, California, defendant in error made and entered into a contract in writing with plaintiff in error, wherein and whereby defendant in error specifically agreed that plaintiff in error should not be liable for any loss, injury or damage to said livestock resulting from heat or climatic conditions.

For the reason that the undisputed evidence showed that if any loss, injury or damage occurred to said cattle, the same was due wholly, solely and entirely to the heat and climatic conditions existing at the time at Yuma, Arizona.

For the reason that the undisputed evidence showed, and it was admitted by defendant in error that at the time of the shipment of said cattle from San Luis Obispo, California, he made and entered into a contract in writing to and with the plaintiff in error, wherein and whereby he specifically agreed and bound himself to load said livestock at point of shipment, unload and reload at resting places and to feed and water the same at his own expense and to

accompany and attend said livestock enroute and to destination; and wherein and whereby defendant in error specifically agreed to attend and care for said livestock during the course of such shipment; and for the reason that the undisputed evidence showed that the defendant in error failed and neglected and refused to attend and care for said cattle at said town of Yuma, the [178] place at which defendant in error is alleging his said cattle were injured and damaged by reason of having been unloaded for feed and rest.

For the reason that the evidence showed, and it was admitted by defendant in error, that he made and entered into a written contract, as above referred to, wherein and whereby, among other things, it was agreed by and between the parties that the plaintiff in error, the railroad company, was not required to deliver said cattle to the defendant in error at destination unless the transportation charges on the same were paid; and for the further reason that it was admitted by the defendant in error that he did not pay the transportation charges.

For the reason that the undisputed evidence showed that there was no negligence whatever on the part of plaintiff in error, defendant below, in the handling and transportation of said cattle.

For the reason that the evidence failed to show any negligence whatsoever on the part of plaintiff in error, defendant below, in the handling and transportation of said cattle. [179]

6. The Court erred in refusing to give the special

charge requested by plaintiff in error, as follows:

“1. If you believe from the evidence that at the time the cattle mentioned in plaintiff’s complaint, arrived at Yuma, Arizona, on the line of railroad operated by defendant, they had been confined in the cars approximately nineteen hours, without feed and rest, and that plaintiff did not tender to or file with defendant or any of its agents any written request separate and apart from any printed bill of lading or other railroad form, authorizing defendant to confine said animals in said cars for a period of thirty-six hours from the time they had been loaded into such cars; and that defendant could not or was not reasonably sure of transporting said animals from said town of Yuma, in said cars, to Phoenix, Arizona, the place of destination, without confining said animals in said cars for a longer period than twenty-eight hours, then your verdict should be in favor of the defendant.”

For the reason that the undisputed evidence showed that defendant in error did not tender to or file with plaintiff in error or any of its agents any written request, separate and apart from any printed bill of lading or other railroad form, authorizing plaintiff in error to confine said animals in said cars for a period of thirty-six hours from the time they had been loaded into such cars; and for the reason that the evidence showed that the plaintiff in error could not have transported said animals from the said town of Yuma, in said cars, to Phoenix, Arizona, the place of destination, without confining said

animals in the cars for a period longer than twenty-eight hours.

For the reason that the evidence showed that it was necessary for the plaintiff in error to unload said cattle at Yuma in order to comply with the Federal Act known as the Twenty-eight Hour Law.

[180]

7. The said Court erred in refusing the special charge requested by plaintiff in error, defendant below, as follows:

“4. If you believe from the evidence that at the time said animals arrived at Yuma, Arizona, they had been confined in the cars approximately nineteen hours without feed or rest, and that it was more humane and better for said cattle to unload them at Yuma for feed and rest than to transport them beyond that point and keep them confined in said cars, then your verdict should be in favor of the defendant.”

For the reason that the plaintiff in error introduced evidence at the trial tending to show that it was better for said cattle and more humane to unload them at Yuma for feed and rest than to have transported them beyond that point.

For the reason that one of the issues involved in said action was as to whether or not it was better for said cattle and more humane to unload them at Yuma for feed and rest than to transport them to any other point in said cars. [181]

8. The Court erred in refusing to give the special charge requested by plaintiff in error as follows:

“5. If you believe from the evidence that it was

less injurious to said animals to unload them at Yuma for feed and rest than to have kept them confined in said cars for nine hours or eighteen hours longer, then you should find for the defendant."

For the reason that one of the issues involved in the case was as to whether or not it was less injurious to such animals to unload them at Yuma for feed and rest than to have kept them confined in said cars for nine hours or eighteen hours longer.

For the reason that plaintiff in error, defendant below introduced evidence tending to show that it was less injurious to unload said animals at Yuma for feed and rest than to have kept them confined in said cars for nine or eighteen hours longer. [182]

9, The Court erred in refusing to give special charge requested by plaintiff in error, defendant below, as follows:

"6. If you believe from the evidence that plaintiff made and entered into with defendant the written contracts as pleaded by defendant, providing that in case of any loss or damage should be sustained to said animals in said shipment for which defendant would be liable, that plaintiff should make written demand on defendant within ten days after unloading said animals at destination; and that it was possible for plaintiff to have made such demand within such time, then you are instructed that plaintiff cannot recover for any loss or damage to any of the animals so delivered at destination; but you are further instructed that as to any animals that may have died in transit; or at destination while the same

were still in the possession of the railroad company, plaintiff was not required to give such notice.”

For the reason that it was admitted by defendant in error, plaintiff below, that he did make and enter into the contracts as pleaded by plaintiff in error, defendant below, and for the reason that defendant in error, plaintiff below, admitted that he did not make written demand upon plaintiff in error, defendant below, or any of its agents, within the ten days after the unloading of said animals at destination, for any claim for damages for injuries to the 87 head mentioned in plaintiff’s complaint; and for the reason that the evidence showed that it was possible for defendant in error to have made such demand within such time, as to said 87 head. [183]

10. That said Court erred in refusing to give special charge requested by plaintiff in error as follows:

“7. Defendant has pleaded that the animals mentioned in plaintiff’s complaint were transported by it and its connecting carrier under three certain contracts in writing, the execution of which contracts plaintiff has admitted.

“These contracts provide, among other things, that in case any loss or damage resulting to said animals in transporting same, for which defendant would be liable, the plaintiff would within ten days after unloading at destination, make written demand upon defendant therefor, and that in the event of failure to make such written demand within such time that all claims for such loss or damage were expressly waived and made void.

“You are instructed that such a provision is reasonable and that if it were possible for plaintiff to have given such notice within such time and he did not do so, then you are instructed that plaintiff cannot recover of defendant for any loss or damage to any of the animals delivered to him at destination; but that said provision as to such notice does not apply to any animals that may have died in transit or at destination before being taken away from unloading pens at destination.”

For the reason that the evidence showed that it was entirely possible for defendant in error to have given the notice referred to within the time mentioned in said contracts as to the 87 head for which defendant in error is claiming damages by reason of the alleged injuries. [184]

11. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“8. If you believe from the evidence that any of the animals mentioned in plaintiff’s complaint died within ten days after unloading at destination, and that plaintiff did not make written demand upon defendant or any of its agents within ten days after such unloading for loss or damage to such animals, then you are instructed that plaintiff cannot recover anything for such animals.”

For the reason that plaintiff below, defendant in error, admitted that he made and entered into the contracts above mentioned and also admitted that he made no written claim upon plaintiff in error, or any of its agents, within ten days after the delivery of

said cattle at destination, and for the reason that if any of said cattle died within ten days after delivery the plaintiff below, defendant in error, by not making any such claim within such time, thereby waived any and all claims therefore as to such animals.

[185]

12. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“9. If you believe from the evidence that plaintiff knew, or could have known by the exercise of reasonable diligence, within ten days after unloading said animals at destination, that eight-seven head of said animals were injured or damaged in the sum of twenty dollars per head, as alleged by plaintiff, and plaintiff did not, within ten days after unloading said animals at destination, make written demand upon defendant or any of its agents for such alleged loss or damage, then you are instructed that plaintiff cannot recover for such alleged loss or damage.”

For the reason that the testimony of plaintiff himself shows that he knew within ten days after unloading said animals at destination that he had an alleged claim for the *eight-seven* head of animals referred to, that he refused to pay the freight charges at destination, giving as a reason therefor, his alleged claim, and the evidence also shows that he knew or could have known by the exercise of reasonable diligence, within ten days after the unloading of said animals at destination, whether or not he had a claim for damages to said eighty-seven head; and for the reason that the question as to whether or not defend-

ant in error knew or could have known by the exercise of reasonable diligence within ten days after the unloading of said animals at destination, whether or not he had a claim for damages to the eighty-seven head was one of the issues involved in said case and should have been submitted to the jury. [186]

13. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“10. If you believe from the evidence that plaintiff could, within ten days after unloading said animals at destination, have given written notice to defendant or any of its agents, of any of the loss or damage to any of the animals, for which plaintiff is seeking to recover, and that he did not give such notice within such time, then you are instructed that plaintiff cannot recover for any of the alleged loss or damage to said animals, for which he could have given such notice, but you are further instructed that plaintiff was not required to give such notice as to any animals that may have died in transit or at destination before being removed from unloading pens.”

For the reason that the undisputed testimony and the testimony of the defendant in error himself showed that he could have given written notice within ten days after unloading said animals at destination, to plaintiff in error or to some of its agents, of his alleged claim for damages to the eighty-seven head mentioned in the complaint, and for the reason that this was one of the issues of fact involved in the case and should have been submitted to the jury. [187]

14. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“11. If you believe from the evidence that plaintiff, at the time said animals were delivered by him to defendant, at San Luis Obispo, California, for transportation by defendant, over its line of railroad and the line of railroad of its connecting carrier to Phoenix, Arizona, made and entered into the contract or contracts in writing, as set forth and pleaded by defendant, wherein and whereby it was agreed and stipulated by and between plaintiff and defendant that the agreed valuation of said animals was the sum of thirty dollars per head; and that plaintiff, by reason of said stipulation that the value of said animals was the said sum of thirty dollars per head, thereby obtained lower and cheaper freight rates for the transportation of said animals from San Luis Obispo, California, to Phoenix, Arizona, than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; and that plaintiff by said contracts stipulated and agreed that in case any loss or damage should be sustained to said animals for which defendant would be liable, that the amount to be claimed by plaintiff for each of said animals, so lost or damaged should be adjusted on the basis of the value of such animals at the time and place of said shipment, to wit, on July 1st, 1913, at San Luis Obispo, California; not exceeding the declared and agreed value thereof, to wit, the sum of thirty dollars per head; and you further find that the loss

and damage to plaintiff's said animals, as alleged, was caused by the negligence of defendant as alleged by plaintiff, to wit, the unloading of said animals at Yuma, Arizona; then you are instructed that plaintiff cannot in any event, recover herein, any greater sum for the animals that died in transit [188] or before being removed from pens at destination, than the said sum of thirty dollars per head and the freight charges on same; and you are further instructed that plaintiff's claim for the animals alleged to have been injured in such transportation should be adjusted on a basis of said declared and agreed valuation of thirty dollars per head and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona; and that if said animals after delivery at destination to plaintiff were of the value of thirty dollars per head, and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona, plaintiff is not entitled to recover anything for any of said animals alleged to have been injured."

For the reason that it was shown by the undisputed evidence and by the admissions of defendant in error that the contracts were made and entered into as set forth in said requested instruction; that defendant in error thereby obtained a cheaper freight rate for the transportation of said animals than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; that defendant in error agreed that in case any loss or damage be sustained to said animals for which plaintiff in error would be liable that the amount to be claimed by defendant in error

for each of said animals so lost or damaged should be adjusted on the basis of the value of such animals at the time and place of shipment, to wit, on July 1st, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value thereof, to wit, the sum of **thirty dollars** per head: that the eighty-seven head for which defendant in error was claiming injuries or damages in the sum of twenty dollars per head were worth, after having received said alleged injuries, the sum of sixty-five **[189]** dollars per head, and were sold for the said sum of sixty-five dollars per head, and that defendant in error did not pay any freight charges on said animals for their transportation from San Luis Obispo, California, to Phoenix, Arizona.

And for the reason that under the law the defendant was not entitled to recover anything for the alleges injuries to the *eight-seven* head sued for if said eighty-seven head were worth sixty-five dollars per head after arrival at destination and after receiving said alleged injuries.

And for the reason that under the law defendant in error was not entitled to recover anything on account of the alleged injuries or damages to the eighty-seven head sued for if said animals were worth more than thirty dollars per head after arriving at destination and after receiving said alleged injuries.

For the reason that said requested instruction embodied the correct interpretation or construction of the livestock shipping contracts in evidence as to the adjustment of claims for damages for injuries to the

animals involved in said shipment. [190]

15. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“15. If you believe from the evidence that the alleged loss and damage to plaintiff’s animals was due to any other cause than unloading them at Yuma, Arizona, then you are instructed that plaintiff cannot recover and your verdict should be in favor of the defendant.”

For the reason that plaintiff in error offered evidence tending to prove that said animals were poor and weak and in starved condition when shipped from San Luis Obispo, California, and for the reason that it was also shown by the undisputed evidence that any injury or damage suffered by said animals was caused by the heat and climatic condition and this question should have been submitted to the jury. [191]

16. The Court erred in refusing to give special instruction requested by plaintiff in error, as follows:

“16. If you believe that at the time plaintiff shipped his said animals from San Luis Obispo, California, they were in a poor, weak or starved condition, and that any of the loss or damage to said animals, as alleged by plaintiff, was due to the condition of said animals at the time they were so shipped then you are instructed that plaintiff cannot recover herein of defendant, for such loss or damage.”

For the reason that evidence was offered by plaintiff in error and admitted tending to prove that the said animals at the time they were shipped from San

Luis Obispo, California, were in a poor, weak and starved condition, and that one of said animals fell down on the way to the loading-pens at said place, and had to be helped into the cars, and said question should have been submitted to the jury. [192]

17. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“17. If you believe from the evidence that plaintiff caused said cattle to be brought from a cool and moist climate into Arizona in July, and into an extremely hot and dry climate, and that plaintiff knew of the climatic conditions then existing in Arizona, and the place or places to which he caused said animals to be transported; and any of the alleged loss or damage to said animals was due to such climatic conditions, then you are instructed that plaintiff cannot recover of defendant for such loss or damage.”

For the reason that it was shown by the undisputed evidence and by the testimony of defendant in error himself that said animals were brought from a cool and moist climate into Arizona, in July, into an extremely hot and dry climate, and that defendant in error knew of the climatic condition then existing in Arizona, and at Yuma, and that he selected the time for transporting said animals; and for the further reason that the undisputed evidence showed that some if not all of the alleged loss, injury or damage was caused by such climatic conditions, and for the reason that said question should have been submitted to the jury. [193]

18. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“18. You are instructed that if plaintiff failed or neglected to attend to unloading and loading his cattle at Yuma, or failed or neglected to properly care for his said cattle while they were at Yuma, and that any of the alleged loss or damage was due to such failure on the part of plaintiff to attend to and care for said cattle, that defendant is not liable therefor, and plaintiff cannot recover for any such loss or damage.”

For the reason that defendant in error (plaintiff below) by the livestock shipping contract made and entered into by and between him and plaintiff in error, absolutely agreed and bound himself to unload and reload said animals at resting places, and to feed and water said animals at his expense, and to accompany and attend and care for said animals en route and to destination.

And for the reason that the undisputed evidence showed, and which was admitted by defendant in error, that he (defendant in error) failed, neglected and refused to assist in unloading said cattle at Yuma, and failed, neglected and refused to attend to and care for said animals at Yuma, and abandoned the same.

And for the further reason that it was admitted by defendant in error's own witness, who was one of the caretakers of said animals accompanying said shipment for defendant in error, that if defendant in error had properly attended to said animals while at Yuma, and properly taken care of the same,

that none of said animals would have died.

And for the reason that it was shown by the undisputed evidence and by the admissions of defendant in error and of [194] *and of* his own witnesses and caretakers that at least some of the injury or damage was due to the failure and negligence of defendant in error to properly care for and attend to said animals at Yuma.

And for the further reason that said question should have been submitted to the jury. [195]

19. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“19. You are instructed that plaintiff cannot recover of defendant for any loss or damage to his cattle resulting from heat or climatic conditions, and if you believe that the alleged loss or damage to plaintiff’s cattle was due to the heat at Yuma, or to the climatic conditions at that place, then your verdict should be in favor of the defendant.”

For the reason that the contracts in evidence specifically provided that defendant in error assumed all risk of loss or damage to said livestock, resulting from heat, or climatic conditions; that there was a sufficient consideration for such agreement; and for the reason that the undisputed evidence showed that the alleged loss and damage was due solely and entirely to the heat at Yuma and the climatic conditions at that place.

And for the reason that the undisputed evidence showed that plaintiff in error had nothing whatever to do with choosing the time of transporting said cattle, but that defendant in error himself selected

the time for such transportation; that defendant in error knew before he shipped said cattle of the climatic conditions then existing at Yuma, and in Arizona; that the weather and climatic conditions at that time at Yuma were extremely hot and dry; and that it would be injurious to said animals to ship them from a moist and cool climate, as then existed in and around San Luis Obispo, California, into Arizona and through Yuma, where there existed such an extremely hot and dry climate. [196]

20. The Court erred in refusing to give special charge requested by plaintiff in error, as follows:

“20. You are instructed that plaintiff cannot recover anything from defendant in this action on account of the alleged injuries and damage to the eighty-seven head of cattle mentioned in plaintiff’s complaint.”

For the reason that by the contracts in evidence it was provided that in case any loss, injury or damage should be sustained by said animals for which plaintiff in error would be liable that defendant in error should make written demand therefor upon plaintiff in error within ten days after unloading said animals at destination; and in the event of failure to give such notice within such time that all claims for loss or damage were expressly waived, released and made void.

And for the further reason that defendant in error admitted and it was shown by the undisputed evidence that no such notice was given within the time mentioned.

And for the reason that the evidence also showed

that it was entirely possible for defendant in error to have given such notice within the time.

And for the further reason that the contracts in evidence expressly provided that in the event any of said animals sustained any loss or damage for which plaintiff in error was liable that the amount to be claimed for each animal so lost or damaged should be adjusted on the basis of value at the time and place of shipment, to wit, July 1, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value of thirty dollars per head, and that in no event would there be any recovery for any loss or damage to said livestock, from whatsoever cause arising in excess of the declared and agreed value of thirty dollars per head. [197]

And for the reason that the undisputed evidence showed and it was also admitted by defendant in error that all of the said eighty-seven head mentioned in the complaint and for which defendant in error was claiming twenty dollars per head for alleged injuries, were worth more than thirty dollars per head after arrival at destination and after having received said alleged injuries, to wit, that they were worth sixty-five dollars per head, and were sold by defendant in error after arrival at destination and after having received said alleged injuries for sixty-five dollars per head. [198]

21. The Court erred in giving the special charge requested by defendant in error, as follows:

“6. If you believe that eighty-seven head of plaintiff’s cattle or any lesser number were damaged as set forth in plaintiff’s complaint and as a result

of the negligent handling and transportation of his cattle by the defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the damage suffered by plaintiff, you may consider the market value of cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition if you find from the evidence the cattle were injured, and the difference in their market value in their normal condition and their value in their injured condition, is a proper measure of plaintiff's damages."

For the reason that by the contracts in evidence it was provided that in case any loss, injury or damages should be sustained by said animals for which plaintiff in error would be liable that defendant in error should make written demand therefor upon plaintiff in error within ten days after unloading said animals at destination; and in the event of failure to give such notice within such time that all claims for loss or damage were expressly waived, released and made void.

And for the further reason that defendant in error admitted and it was shown by the undisputed evidence that no such notice was given within the time mentioned.

And for the reason that the evidence also showed that it was entirely possible for defendant in error

to have given [199] such notice within the time.

And for the further reason that the contracts in evidence expressly provided that in the event of any of said animals sustaining any loss or damage for which plaintiff in error was liable that the amount to be claimed for each animal so lost or damaged would be adjusted on the basis of value at the time and place of shipment, to wit, July 1, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value of thirty dollars per head, and that in no event should there be any recovery for any loss or damage to said livestock, from whatsoever cause arising in excess of the declared and agreed value of thirty dollars per head.

And for the further reason that the undisputed evidence showed and it was also admitted by defendant in error that all of the said eighty-seven head mentioned in the complaint and for which defendant in error was claiming twenty dollars per head for alleged injuries, were worth more than thirty dollars per head after arrival at destination and after having received said alleged injuries, to wit, that they were worth sixty-five dollars per head, and were sold by defendant in error after arrival at destination and after having received said alleged injuries for sixty-five dollars per head. [200]

22. The Court erred in giving the special charge requested by defendant in error, as follows:

“8. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff’s shipment was moving, into which plaintiff’s cattle could have been unloaded

within the twenty-eight hour period and in a more humane manner than by unloading them at Yuma under the circumstances developed in this case, then it was the defendant's positive duty to transport said cattle to such station for unloading."

For the reason that the evidence showed that at the time the cattle arrived at Yuma they had been confined in the cars, without feed, water or rest for eighteen hours and fifty-five minutes; that they had been shipped from Los Angeles, California, to Yuma, Arizona, through a hot, dry, dusty, desert country; that the train carrying said cattle would necessarily have had to remain at Yuma, in the yard at that place, for the purpose of inspection, changing engines, changing crews, etc., for at least one hour before it could have departed from Yuma; that said train did actually remain at Yuma for one hour and fifteen minutes; that the next station on the line of plaintiff in error at which there were any cattlepens for unloading for feed and rest was Gila, a distance of 123 miles; that the schedule time of such a train, had the five cars of cattle remained in it, from Yuma to Gila was ten hours; that it would have taken said train ten hours to have made the run from Yuma to Gila if said five cars of cattle had remained in said train, which would have necessitated said cattle remaining in said cars, without feed, rest or water, for approximately thirty hours, and for a longer period than twenty-eight hours.

For the reason that the evidence showed that it was better [201] for the cattle and more humane to unload at Yuma than to have transported

them on any further.

For the reason that the evidence showed that plaintiff in error did not have other corrals or cattle pens on its line of road, in the direction in which the shipment was moving, into which said cattle could have been unloaded, which could have been reached by said train within twenty-eight hours from the time the cattle had been loaded in Los Angeles, California.

For the reason that the undisputed evidence showed and defendant in error admitted that he (defendant in error) abandoned said cattle at Yuma, and failed, neglected, and refused to attend to or care for them, and for the reason that it was the duty of defendant in error under the contracts in evidence to attend to and care for said cattle en route to destination."

[202—31]

The Court erred in charging the jury in the general charge, as follows: "In this same connection you may also determine whether or not there was on said 4th day of July, 1913, any other place or station on defendant's line which the train carrying these cattle, and operating on its schedule, could have reached within the twenty-eight hour period, at which the cattle could have been unloaded, fed, watered and rested, under conditions more favorable than existed at said town of Yuma on July 4, 1913. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff's shipment was moving, into which plaintiff's cattle could have been unloaded within the twenty-eight hour period and in a more

humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant's positive duty to transport said cattle to such station for unloading."

For the reason that the evidence showed that at the time the cattle arrived at Yuma they had been confined in the cars, without feed, water or rest for eighteen hours and fifty-five minutes; that they had been shipped from Los Angeles, California, to Yuma, Arizona, through a hot, dry, dusty, desert country; that the train carrying said cattle would necessarily have had to remain at Yuma, in the yard at that place, for the purpose of inspection, changing engines, changing crews, etc., for at least one hour before it could have departed from Yuma; that said train did actually remain at Yuma for one hour and fifteen minutes; that the next station on the line of plaintiff in error at which there were any cattle-pens for unloading for feed and rest was Gila, a distance of 123 miles; that the schedule time of such a train, had the five cars of cattle remained in it, from Yuma to Gila was ten hours; that it would [203] have taken said train ten hours to have made the run from Yuma to Gila if said five cars of cattle had remained in said train, which would have necessitated said cattle remaining in said cars, without feed, rest or water, for approximately thirty hours, and for a longer period than twenty-eight hours.

For the reason that the evidence showed that it was better for the cattle and more humane to unload at Yuma than to have transported them any further.

For the reason that the evidence showed that plain-

tiff in error did not have other corrals or cattle-pens on its line of road, in the direction in which the shipment was moving, into which said cattle could have been unloaded, which could have been reached by said train within twenty-eight hours from the time the cattle had been loaded in Los Angeles, California.

For the reason that the undisputed evidence showed and defendant in error admitted that he (defendant in error) abandoned said cattle at Yuma, and failed, neglected and refused to attend to or care for them, and for the reason that it was the duty of defendant in error under the contracts in evidence to attend to and care for said cattle en route to destination. [204]

24. The Court erred in charging the jury in the general charge, as follows: "The defendant company also pleads that notwithstanding the fact that it may have been guilty of negligence in the particulars set out in the complaint, nevertheless the plaintiff in this case cannot recover, because the contract heretofore referred to (and which was signed by the plaintiff, and by Mr. Ford, and Mr. Whitton, on behalf of the plaintiff, who were thereunto duly authorized) provides that the 'second party thereby further agrees that in case of any loss or damage shall have been sustained for which first party is liable, demand or claim for such loss or damage will be made by the second party on the freight claim agent of the first party in writing within ten days after unloading of the livestock; and that in event of failure so to do, all claims for loss or damages in the premises are hereby expressly waived, released and

made void.' Defendant alleges that no claim for loss or injury to said cattle was presented to it, or any of its agents or employees within the ten-day period. If you find this to be true, then, of course, the plaintiff cannot recover unless you further find that the defendant waived this provision of the contract, *of* that the plaintiff was relieved from a compliance therewith as is hereinafter stated. The plaintiff, in reply to this contention that the claim should have been presented in writing within ten days after the unloading of the livestock, alleges that he was relieved from compliance with the above-quoted provision in that 'on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at . . . Yuma—(I say, subsequent to the arrival at Yuma)—the defendant had full knowledge and notice of the injuries and damages to plaintiff's cattle as set forth in its said complaint; that said cattle were unloaded by the defendant [205] into its stock-pens at the station of Yuma between the hours of 9 and 10 o'clock A. M. on the 4th day of July, 1913, and between said dates and the hour of 7:30 P. M. of said day, and prior to the reloading of the cattle into defendant's cars, five of said cows died. . . . That upon reloading the said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen of the crippled and sick cattle of the plaintiff to their destination at Phoenix; that at various points between said station of Yuma and the city of Phoenix the train officials in charge of said shipment received telegraphic inquiries from other offi-

cial of the defendant inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week; and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the plaintiff's cows which arrived at the destination alive, were such as to render it impossible for the plaintiff, or any other person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained by the plaintiff within the said ten-day period; that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of such injuries. . . . That the defendant had on many occasions prior to the 21st day of October, 1913, recognized plaintiff's right to recover in some amount on account of his damages, sustained as set forth in his said complaint, [208] and has on many occasions attempted to settle and compromise said claim with the plaintiff.' I repeat those allegations of the reply in order to show what the plaintiff claims as his reason or excuse for not having presented his claim in writing to the defendant company or its agents within ten days from the date of such loss or injury, as is provided by the contracts.

“I charge you as master of law that if you believe the defendant or its agents or employees did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in the plaintiff’s complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the said provision of said contracts.”

For the reason that the evidence showed that plaintiff in error had never waived the giving of such notice; that the defendant in error was not relieved from giving such notice; that it was entirely possible for defendant in error to have given the notice as to his alleged claim for damages to the eighty-seven head mentioned in the complaint within the ten days.

For the reason that defendant in error admitted he knew within the ten days that he had an alleged claim for damages as to said eighty-seven head, and that he knew or should have known within the ten days the condition of the cattle.

And for the reason that any negotiations that defendant in error may have had with plaintiff in error with reference to compromise or settlement did not constitute a waiver on the part of plaintiff in error of the provision in said contracts requiring written claim for loss or damage to be made within ten days after the animals were unloaded at destination.

[207]

25. The Court erred in charging the jury in the general charge, as follows: “The written contracts

introduced in evidence limit the liability of the defendant company to thirty dollars for each animal injured or killed, and if you find for the plaintiff you should assess the damages at not exceeding thirty dollars per head for the cattle killed and not to exceed twenty dollars per head, the amount claimed in plaintiff's complaint, for the injury caused to each of said cattle by the defendant's negligence. The measure of damages in case of injury to the cattle under the contract is the amount of actual damages to each of said cattle so injured, resulting from the negligence of the defendant, its agents or employes, in no case to exceed twenty dollars per head. The measure of damages as to those that were killed is not exceeding thirty dollars per head. A shipper will not be heard to claim or recover for damages or loss, however great, in excess of the amount claimed in the bill of lading as the agreed value; nor will the carrier be allowed to deny liability for actual damages up to that amount, except, as in this case, where a less amount is claimed in the complaint, which in this case is twenty dollars per head for each of the cattle injured and not killed. The carrier must respond for negligence up to that value but no further. If you come to the conclusion that the plaintiff is entitled to recover some damages, then, as I have heretofore stated, the measure of his damages for the eleven head of cattle that died, if you believe they died as a result of the defendant's negligence, would be not exceeding thirty dollars per head, and the measure of damages for the cattle that were injured by reason of the defendant's negligence would be the

difference between the market value of the said cattle in their normal condition after making the trip from San [208] Luis Obispo, California, to Phoenix, Arizona, and the condition in which they were actually delivered at Phoenix, but in no event can such injury or damages to each cow be placed at a figure in excess of twenty dollars; in other words, in arriving at the damages, if any, to be awarded to the plaintiff by reason of the cattle injured, if any, through the negligence of the defendant company, the measure of such damages will be the depreciation in the market value of the cattle by reason of such injury or injuries, such damages in no event, however, to exceed the sum of twenty dollars per head. If you believe that eighty-seven head of the plaintiff's cattle or any lesser number were damaged as set forth in plaintiff's complaint, and as a result of the negligent handling and transportation of the cattle by defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the damage suffered by the plaintiff you may consider the market value of the cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition, if you find from the evidence that the cattle were injured, and the difference in their market value in their normal condition and their value in their injured condition is a proper measure

of plaintiff's damages, as I said before, not exceeding twenty dollars per head for the cattle injured."

For reason that the contracts in evidence and referred to expressly provided that in the event any of said animals sustained any loss or damage for which plaintiff in error was liable that the amount to be claimed for each animal so lost [209] or damaged should be adjusted on the basis of value at the time and place of shipment, to wit, July 1, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value of thirty dollars per head, and that in no event should there be any recovery for any loss or damage to said live stock from whatever cause arising in excess of the declared and agreed value of thirty dollars per head.

And for the reason that the undisputed evidence showed and it was admitted by defendant in error that all of the said eighty-seven head mentioned in the complaint and for which defendant in error was claiming twenty dollars per head for alleged injuries, were worth more than thirty dollars per head after arrival at destination, and after having received said alleged injuries, to wit, that they were worth sixty-five dollars per head and were sold by defendant in error after arrival at destination and after having received said alleged injuries for sixty-five dollars per head.

And for the reason that it was not proper to adjust the alleged damages by taking the difference between the market value, or what would have been their market value in their normal condition, and their

value in the condition in which the cattle were delivered at destination.

For the reason that said charge placed an erroneous construction and interpretation upon the terms of said contracts in the particulars above pointed out. [210]

26. The Court erred in charging the jury as follows: "Some testimony has been introduced with reference to the failure of the plaintiff to pay the freight charges on the cattle upon the arrival at Phoenix. I do not see how this question or this testimony affects the question as to whether or not the defendant company was guilty of negligence in the manner as alleged in plaintiff's complaint, although this testimony was introduced without objection of counsel; and if you believe that the defendant was negligent, under the definition of that term, in the handling of the cattle, and believe that the plaintiff is entitled to recover, then you will render a verdict for the plaintiff, notwithstanding the fact, if it be a fact, that upon the arrival of the cattle at Phoenix, the plaintiff did not pay the freight before taking possession of the cattle. In other words, gentlemen, I think that is an issue to be tried out in another lawsuit and not in the one now being tried."

For the reason that the contracts in evidence, under which the cattle were shipped, expressly provided that defendant in error was not entitled to receive from the carrier and the carrier was not bound to deliver to defendant in error any of said cattle without payment of the freight charges. [211]

WHEREFORE, by reason of the errors aforesaid,

the said Southern Pacific Company prays that the judgment rendered and entered in this action be avoided, annulled and reversed and that the said District Court of the United States for the District of Arizona be directed to grant a new trial of said cause.

FRANCIS M. HARTMAN,
J. C. FOREST,

Attorneys for Plaintiff in Error, Defendant in the
Court Below.

[Endorsements]: No. 142 (Phx.) In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a corporation, Plaintiff in Error, vs. Frank R. Stewart, Defendant in Error. Assignment of Errors. Filed Dec. 18, 1915. George W. Lewis, Clerk. [212]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Petition for Writ of Error.

To the Honorable WILLIAM H. SAWTELLE,
Judge of the District Court Aforesaid:

Now comes the Southern Pacific Company, by its attorneys, and respectfully represents: That this action is brought by plaintiff to recover of defendant damages in the sum of three thousand six hundred

ninety-five dollars, for alleged loss and injury to a certain shipment of cattle made by plaintiff, on or about the 1st day of July, 1913, from the town of San Luis Obispo, California, over the line of railroad operated by the said Southern Pacific Company, the defendant, and over its connecting carriers, to the city of Phoenix, in the State of Arizona:

That on the 26th day of October, 1915, said cause came on for trial before the above-entitled court and jury duly empanelled:

That thereafter and on the 29th day of October, 1915, the said jury found a verdict against your petitioner and in favor of said Frank R. Stewart, plaintiff, for the sum of two thousand and ninety dollars, and upon said verdict a final judgment was entered on the said 29th day of October, A. D. 1915, against your petitioner, defendant in said action, and your petitioner feeling itself aggrieved by the said verdict and judgment [213] entered thereon as aforesaid, therefore petitions the Court for an order allowing it to prosecute a writ of error to the Circuit Court of the United States for the Ninth Circuit, under the laws of the United States in such cases made and provided.

WHEREFORE, premises considered, your petitioner prays that a writ of error do issue, that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting at the city of San Francisco, in said Circuit, for the correction of errors complained of and herewith assigned, be allowed, and that an order be made fixing the amount of security to be given by plaintiff in error, conditioned as the

law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals.

FRANCIS M. HARTMAN,
J. C. FOREST,

Attorneys for Defendant.

Allowed this — day of December, A. D. 1915.

Judge.

[Endorsements]: No. 142—Phoenix. In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Petition for Writ of Error. Filed Dec. 18, 1915, George W. Lewis, Clerk. [214]

**[Order Allowing Writ of Error Fixing Amount of
Supersedeas Bond.]**

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Upon motion of Francis M. Hartman and J. C. Forest, Esquires, attorneys for defendant, and upon filing a petition for a writ of error and assignment of errors,

IT IS ORDERED that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein and that the amount of the supersedeas bond on said writ of error be and it hereby is fixed at three thousand (\$3,000) dollars and upon the filing of such bond and approval thereof by the Judge of this court that all further proceedings herein be suspended until the determination of said writ of error by said Circuit Court of Appeals.

Dated this 18th day of December, A. D. 1915.

WM. H. SAWTELLE,

Judge.

[Endorsements]: No. 142—Phoenix. In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Order Allowing Writ of Error and Fixing Bond. Filed Dec. 18, 1915, George W. Lewis, Clerk. [215]

*In the United States District Court for the District
of Arizona.*

No. 142—PHOENIX.

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Supersedeas Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: that we, Southern Pacific Company, a corporation, as principal, and Albert Steinfeld and Epes Randolph of the county of Pima, State of Arizona and district aforesaid, as sureties, are held and firmly bound unto Frank R. Stewart, in the full and just sum of three thousand dollars (\$3,000), to be paid to the said Frank R. Stewart, his administrators, executors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our successors, assigns, executors and administrators, jointly and severally by these presents.

Signed and dated this 17th day of December, A. D. 1915.

WHEREAS, lately, at a regular term of the District Court of the United States for the District of Arizona, sitting at Phoenix, in said district, in a suit pending in said court between Frank R. Stewart, as plaintiff, and the Southern Pacific Company, a Corporation, as defendant, cause No. 142 on the law docket of said court, final judgment was rendered against said Southern Pacific Company, a corporation, for the sum of two thousand ninety dollars (\$2,090), with interest thereon at the rate of six per cent per annum from date thereof until paid; and the said Southern Pacific Company, a corporation, has obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment of said court in the said suit and a citation directed to said Frank

R. Stewart, [216] defendant in error, citing him to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, in the State of California according to law, within thirty (30) days from the date hereof:

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if the said Southern Pacific Company, a corporation, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

SOUTHERN PACIFIC COMPANY.

By T. H. WILLIAMS,

Its Superintendent.

ALBERT STEINFELD,

EPES RANDOLPH.

State of Arizona,
County of Pima,—ss.

Albert Steinfeld and Epes Randolph, being first duly sworn, each for himself and not one for the other deposes and says: That he is a resident and householder within the county of Pima, State of Arizona, and within the district aforesaid: That he is worth the sum of three thousand dollars, the amount specified in the foregoing bond, over and above all just debt and liabilities and exclusive of property exempt from execution and forced sale.

ALBERT STEINFELD,

EPES RANDOLPH.

Subscribed and sworn to before me this 17th day of

December A. D. 1915. My commission expires Feb.
19, 1916.

[Seal]

R. W. LANGWORTHY,

Notary Public, Pima County, Arizona.

Approved this 18th day of December, A. D. 1915.

WM. H. SAWTELLE,

Judge. [217]

State of Arizona,

County of Pima,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that Albert Steinfeld and Epes Randolph, the parties to this bond whose signatures are subscribed thereto are in my opinion good and ample security for the amount therein specified, and that they have property within the said county of Pima, State of Arizona, subject to execution, in excess of the amount of said bond; and that if the bond was presented to me for approval the same would be accepted and approved.

Witness my hand this 23d day of December A. D. 1915.

GEORGE W. LEWIS,

Clerk.

[Endorsements]: No. 142. Phoenix. In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a corporation, Defendant. Supersedes Bond on Writ of Error. Filed Dec. 18, 1915. George W. Lewis, Clerk. [218]

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY a Corpora-
tion,

Defendant.

Praeipce for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, upon the writ of error heretofore sued out herein by the said Southern Pacific Company, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. The plaintiff's complaint.
2. The summons and return of service.
3. The defendant's second amended pleas and answer.
4. The plaintiff's reply to defendant's second amended pleas and answer.
5. The empaneling of the jury.
6. The defendant's motion for a directed verdict.
7. The verdict.
8. The judgment.
9. The minute entries of the trial.
10. The bill of exceptions.

11. The petition for writ of error.
12. The assignment of errors.
13. The supersedeas bond and approval.
14. The order allowing writ of error.
15. The original writ of error.
16. The original citation in error.
17. The praecipe.
18. The clerk's certificate.

the said transcript to be filed with the clerk of the Circuit Court of Appeals of the Ninth Circuit, at San Francisco, Calif., before January sixteenth, 1916.

FRANCIS M. HARTMAN,
J. C. FOREST,

Attorney for Plaintiff in Error. [219]

**[Admission of Service of Praecipe for Transcript of
Record.]**

*In the United States District Court for the District
of Arizona.*

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY a Corpora-
tion,

Defendant.

Service of the foregoing praecipe in the above-entitled action is hereby admitted and accepted this

20th day of December, A. D. 1915.

HAYES & LANEY,
Attorney for Frank R. Stewart,
Defendant in Error, Plaintiff Below.

[Endorsements]: No 142. In the United States District Court for the District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Praecipe for Transcript. Filed Dec. 20, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [220]

*In the United States District Court for the District
of Arizona.*

No. 142 (PHOENIX.)

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY a Corpora-
tion,

Defendant.

**Order Under Rule 16, Section 1, Enlarging Time to
File Record and to Docket Case.**

On consideration of the application of George W. Lewis, the clerk of the District Court of the United States for the District of Arizona, and good cause appearing therefor,

IT IS ORDERED that the time within which the original certified transcript of the record in the above-entitled cause may be filed and within which the cause may be docketed with the clerk of the

United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and hereby is enlarged to and including the 18th day of February, A. D., 1916.

Dated at Phoenix, Arizona, this 14th day of January, A. D., 1916.

WM. H. SAWTELLE,

Judge of the United States District Court for the District of Arizona.

[Endorsements]: No. 142 (Phx.) In the United States District Court for District of Arizona. Frank R. Stewart, Plaintiff, vs. Southern Pacific Co., Defendant. Order Enlarging Time to File Transcript of Record and to Docket Cause. Filed January 14, 1916. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [221]

In the United States District Court, District of Arizona.

No. 142 (PHOENIX.)

FRANK R. STEWART,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY a Corporation,

Defendant.

**Certificate of Clerk of United States District Court
to Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States

District Court for the District of Arizona, do hereby certify that the two hundred twenty-one (221) typewritten pages, numbered from one (1) to two hundred twenty-one (221), inclusive, constitutes a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same remain of record on file in the office of the clerk of said District Court, and that the same constitutes the record on appeal from the judgment of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid into my office by or on behalf of [222] the defendant for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905), for making typewritten transcript of rec- ord—686 folios at 30c per folio.....	\$205.80
Certificate of Clerk to Typewritten Tran- script of Record, 4 folios at 30c per folio	1.20
Seal to said Certificate.....	.40

\$207.40

I hereby certify that the above cost for preparing and certifying record, amounting to \$207.40, has been paid to me by Francis M. Hartman, Esquire, one of counsel for the defendant herein.

I further certify that I hereto attach and herewith transmit the original Writ of Error and Citation in this cause, the same being numbered from page two hundred twenty-four (224) to page two hundred twenty-nine (229), inclusive.

WITNESS my hand and the Seal of said District Court, affixed this 3d day of February, A. D., 1916, at Phoenix, Arizona.

[Seal]

GEORGE W. LEWIS,

Clerk.

By R. E. L. Webb,

Deputy Clerk. [223]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY a Corpora-
tion,

Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error.

Writ of Error.

United States of America,—ss.

The President of the United States to the Hon-
orable Judges of the District Court of the United
States for the District of Arizona, Greeting:

Because in the record and proceedings as also in

Allowed this 18 day of December, A. D. 1915.

WM. H. SAWTELLE,

Judge of the District Court of the United States for
the District of Arizona. [225]

[Endorsed]: No. 142. (Phx.) In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. Frank R. Stewart, Defendant in Error. Writ of Error. Filed Dec. 18, 1915. George W. Lewis, Clerk. [226]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,
tion,

Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error.

Citation [on Writ of Error].

United States of America,—ss.

To Frank R. Stewart, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, State of California, on the 16th day of January, A. D. 1916, pursuant to writ of error filed in the office of the clerk of the United States District Court for the District of Arizona, wherein the Southern Pacific Company, a corporation, is plaintiff in error, and

Frank R. Stewart is defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected in order that speedy justice should be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 18th day of December, A. D. 1915.

WM. H. SAWTELLE,
United States District Judge for the District of
Arizona. [227]

[Admission of Service of Citation on Writ of Error.]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,
Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error,

Service of the foregoing citation in the above-entitled action is hereby admitted and accepted this 20th day of December, A. D., 1915.

HAYES & LANEY,
Attorneys for Frank R. Stewart, Defendant in
Error. [228]

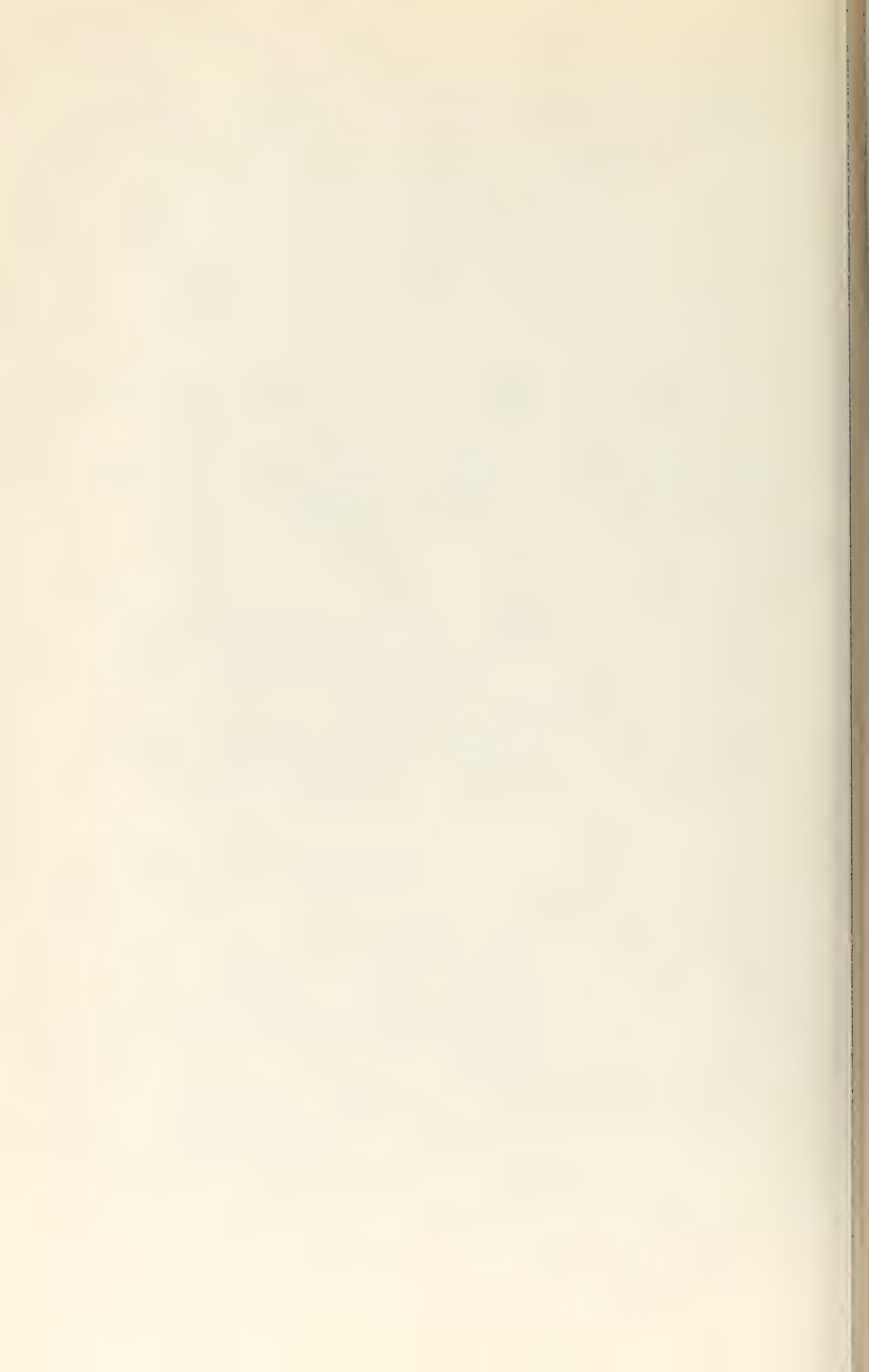
[Endorsed]: No. 142. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. Frank R. Stewart, Defendant in Error. Citation. Filed Dec. 20, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb. Deputy. [229]

[Endorsed]: No. 2745. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. Frank R. Stewart, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Filed February 5, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.



2

No. 2745

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error.

vs.

FRANK R. STEWART,

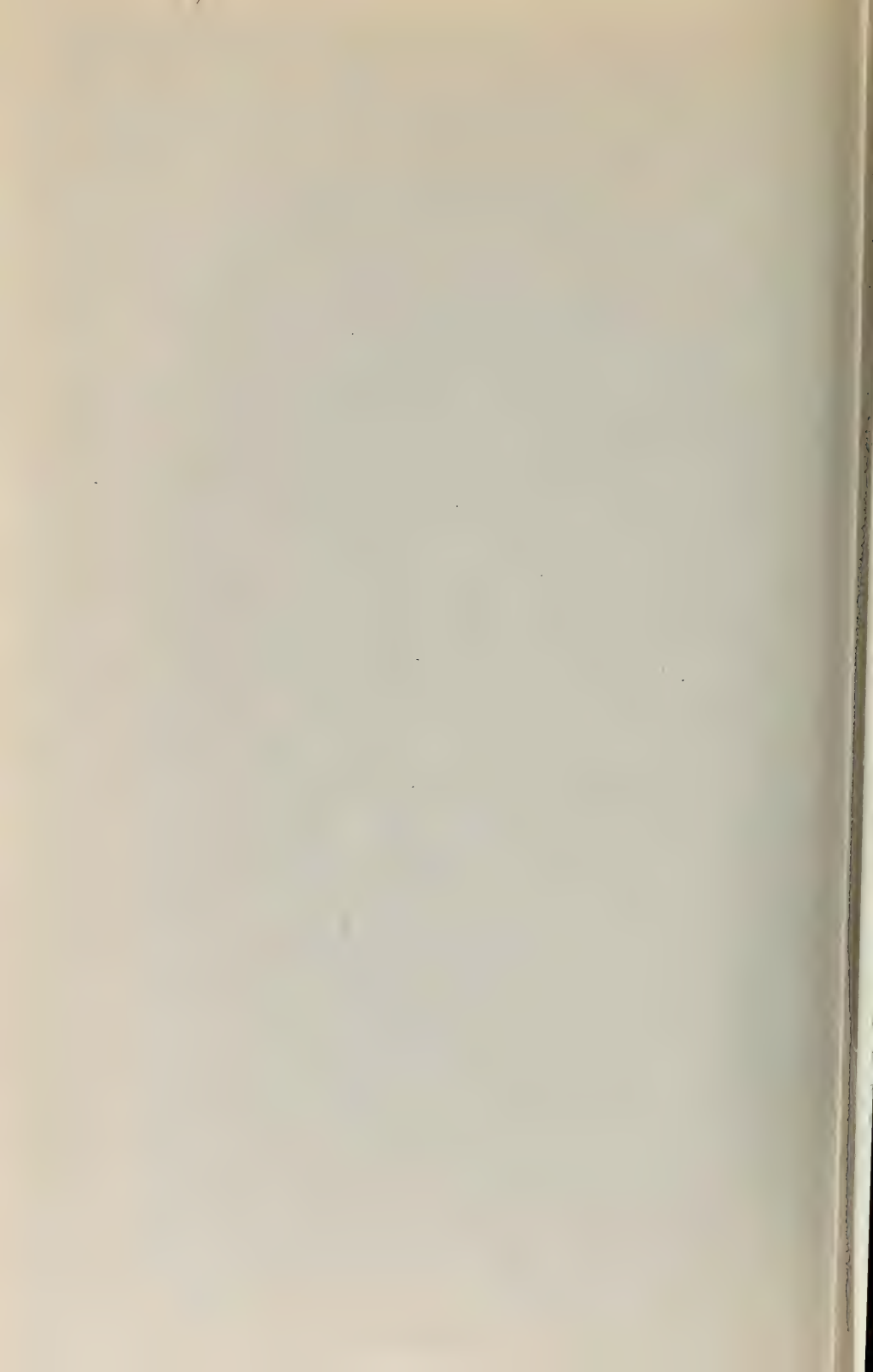
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR

J. C. FOREST,

FRANCIS M. HARTMAN,

Attorneys for Plaintiff in Error.



No. 2745

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error.

vs.

FRANK R. STEWART,

Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR

STATEMENT OF THE CASE

This Writ of Error is brought by the Southern Pacific Company as Plaintiff in Error, to reverse a judgment of the United States District Court for the District of Arizona, rendered upon a verdict against the Southern Pacific Company, defendant below, and in favor of Frank R. Stewart, plaintiff below and defendant in error herein.

Defendant in error, plaintiff below instituted the action against plaintiff in error, defendant below, to recover compensatory damages in the sum of \$2,695.00 and punitive

or exemplary damages in the sum of \$1,000.00 for alleged injuries to 52 head of dairy cows shipped by defendant in error, on July 1st, 1913, from San Luis Obispo, California, over the railroad of plaintiff in error and the railroad of its connecting carrier, to Phoenix, Arizona.

Defendant in error alleged in his complaint that five of said animals died en route, that six died shortly after arrival at destination, that eighty-seven head were damaged in the sum of twenty dollars per head, that the animals which died and the eighty-seven head alleged to have been so injured were of the value of \$85.00 per head.

The only act of negligence alleged was that the carrier unloaded the animals at the station of Yuma, Arizona, en-route, on July 4th, 1913, when the weather at said place was exremely hot, and into pens which were dusty and unprotected from the sun, instead of transporting said animals to destination, Phoenix, Arizona.

Plaintiff in error set up both by plea and answer that at the time said animals arrived at Yuma, they had been confined in the cars for about twenty hours without feed, water or rest; that it was absolutely necessary to unload said animals at said place for feed, rest and water in order to comply with the provisions of the Act of Congress known as the Twenty-Eight Hour Law, that said animals were unloaded at said place for the purpose of complying with said law and that it was impossible to have transported said animals to destination or beyond said station of Yuma, without violating said law.

Plaintiff in error also set up plea and answer that said animals were so transported under a certain contract in writing by which defendant in error agreed that in case any loss or damage should be sustained for which plaintiff in error might be liable that notice in writing should be given to plaintiff in error within ten days after unloading at destination, otherwise all claims for loss or damage were

thereby waived, that defendant in error did not give such notice within the time specified and that it was entirely possible for defendant in error to have done so.

That defendant in error by said contract stipulated that the agreed value of said animals was the sum of thirty dollars per head, that in case any loss or damage should be sustained for which the carrier might be liable, that the amount claimed for each animal so lost or damaged should be adjusted on the basis of said stipulated and agreed value.

That said contract was made and entered into in consideration of the defendant in error obtaining a lower published freight tariff rate than would have been otherwise assessed had a higher valuation been placed upon said animals.

That under and by virtue of said contract defendant in error expressly assumed all risk of loss or damage to said animals resulting from heat, suffocation or climatic conditions.

Plaintiff in error denied that it was guilty of any negligence whatsoever in transporting said animals.

The questions involved are:


1. The rulings of the court at the trial that certain evidence offered by plaintiff in error was inadmissible with reference to the condition and equipment of its cattle pens at Yuma, Arizona.

2. The ruling of the court denying motion of plaintiff in error at the close of the testimony, for a directed verdict.

3. The refusal of the court to give special charge requested by plaintiff in error in substance that if the jury believed said animals had been confined in the cars for approximately nineteen hours without feed or rest, upon arrival at Yuma, and that plaintiff in error could not or was not reasonably sure of being able to transport said animals from said town of Yuma, in said cars to destination, Phoenix, Arizona, without confining said animals in

the cars for a longer period than twenty-eight hours, they should find a verdict in its favor.

4. The refusal of the court to give special charge requested by plaintiff in error, in substance that if the jury believed it was more humane and better for said animals to unload them at Yuma for feed and rest than to transport them beyond that point, they should find in its favor.

5. The refusal of the court to give special charge requested by plaintiff in error, that if they believed it was possible for defendant in error to have given the written notice within ten days after unloading at destination of his claim for damages to the animals delivered at destination, and he did not do so, he could not recover for such  loss or damage.

6. The refusal of the court to give special charge requested by the plaintiff in error in substance that plaintiff's claim for damages for injuries to the animals delivered at destination should be adjusted on the basis of the declared and agreed valuation of thirty dollars per head, and that if said animals after delivery at destination were of the value of thirty dollars per head and the freight charges thereon from point of shipment that he was not entitled to recover anything for any of such animals.

7. The refusal of the court to give special charge requested by plaintiff in error, in substance that if the jury believed the alleged loss or damage to said animals was due to any other cause than unloading at Yuma that defendant in error could not recover.

8. The refusal of the court to give special charge requested by plaintiff in error, that if the jury believed defendant in error caused said animals to be brought into Arizona, in July, and into an extremely hot and dry climate, and that defendant in error knew of such climatic conditions, and if such alleged loss or damage was due to such climatic conditions that defendant in error could not recover.

9. The refusal of the court to give special charge requested by plaintiff in error, that if defendant in error failed or neglected to attend to or properly care for his animals while they were at Yuma, and that any of the alleged loss or damage was due to said cause that defendant in error was not entitled to recover for such loss or damage.

10. The refusal of the court to give special charge requested by plaintiff in error, that defendant in error could not recover for any loss or damage to his cattle resulting from heat or climatic conditions.

11. The action of the court in charging the jury in its general charge:

(a) That it was the positive duty of plaintiff in error to have transported said animals beyond the station of Yuma, to some other place or station where said cattle could have been unloaded, fed, watered and rested, under conditions more favorable than existed at Yuma, Arizona, on July 4, 1913, if such place could have been reached within the twenty-eight hour period.

(b) That defendant in error, plaintiff below was relieved from giving the carrier written notice of his claim for loss or damage to the cattle that were delivered, if plaintiff in error or its agents knew said cattle had been injured or if plaintiff in error was negotiating with defendant in error for settlement of his account.

(c) That the measure of damages for the cattle that were injured would be the difference between the market value of the animals in their normal condition, at destination, and the condition in which they were actually delivered, not to exceed twenty dollars per head (the amount claimed in the complaint); in other words that the measure of damages would be the depreciation in the market value of cattle by reason of the injuries, not to exceed twenty dollars per head.

ASSIGNMENTS OF ERROR

Plaintiff in error relies upon the following Assignments of error :

1. Assignment of Error No. 1. (Transcript p 193). "That the court erred in sustaining the objection of counsel for defendant in error, plaintiff below, on the ground that the same was immaterial, to the following question propounded to the witness, J. J. Casey, by counsel for plaintiff in error, defendant below: 'Q. How do the cattle pens of the Southern Pacific Company at Yuma compare with the cattle pens in other places in Arizona and in the Southwest that you have seen and observed?' "

For the reason that said witness had already testified that he had resided in Arizona for thirty years and had been engaged in the cattle business and farming for twenty-five years; had had experience in shipping cattle into and out of Arizona and over the line of the Southern Pacific Company's railroad through the town of Yuma, and had seen and inspected the cattle pens of the Southern Pacific Company at Yuma and had seen and inspected the cattle pens in other places in Arizona and in the Southwest used for the purpose of unloading and feeding cattle in the course of transportation by railroad, and because the witness would have testified, if he had been permitted to do so, that the cattle pens of the Southern Pacific Company at Yuma, and being the cattle pens in question in this law suit, were just as good and as properly equipped as other pens in Arizona and in the Southwest used for unloading and feeding cattle in the course of transportation by railroads, and that the cattle pens of the Southern Pacific Company at Yuma were properly equipped; and because said testimony was material in view of the allegations of plaintiff's complaint wherein he alleges that the cattle pens of the said Southern Pacific Company at Yuma were not properly equipped; and for the

reason that plaintiff in error, defendant below was not required to maintain at the said town of Yuma cattle pens equipped any differently or any better than cattle pens at other places in Arizona and in the Southwest similarly situated.

2. Assignment of Eddor No. 2. (Transcript p. 194).
 "The court erred in sustaining the motion made by counsel for defendant in error to strike out the answer made by the witness, J. J. Casey, as follows: 'Q. State whether or not those pens at El Paso, Texas, have any sheds over them for shade? A. No, sir, they have not.'"

For the reason that the witness had testified that he had shipped cattle through El Paso, Texas, by railroad; had unloaded cattle into the pens of the Southern Pacific Company at El Paso, Texas, and had also seen the cattle pens at El Paso, Texas, of other railroad companies:

For the reason that the testimony was material in view of the issues raised by the pleadings, and in view of the contention of defendant in error that the cattle pens of the Southern Pacific Company at Yuma were not properly equipped because they did not have sheds over them."

3. Assignment of Error No. 3. (Transcript p. 195).
 "Said court erred in sustaining the objection made by counsel for defendant in error, on the ground that the same was immaterial, to the following questions propounded to the witness, J. J. Casey by counsel for plaintiff in error: 'Q. Please state whether or not the cattle pens of the Southern Pacific Company at Yuma compared favorably or are practically the same with reference to there being no sheds for shade for the cattle as the cattle pens of the railroads at Tucson, Bowie, and Phoenix, Arizona, El Paso, Texas, and Indio, California, places similarly situated and having the same climatic conditions as Yuma, Arizona?'

For the reason that the witness would have testified in answer to said question, if he had been permitted to do so,

and plaintiff in error expected to elicit from the witness in answer to said question that the cattle pens of the Southern Pacific Company at Yuma compare favorably with and were equipped practically the same as the cattle pens at other places named and which were similarly situated and having the same climatic conditions as Yuma, Arizona, and that none of such pens at such other places, so similarly situated, had sheds over them for shade, and that the cattle pens of the Southern Pacific Company at Yuma were properly equipped; and for the reason that said testimony was material in view of the issues raised by the pleadings, and in view of the contention by defendant in error that said cattle pens were not properly equipped because they did not have sheds over them for shade."

4. Assignment of Error No. 4. Transcript p. 196). "The court erred in sustaining the objection made by counsel for defendant in error, on the ground that the same was immaterial, to a certain question propounded to the witness Charles Davis by plaintiff in error, as follows: 'Q. Did you ever see any cattle pens with sheds over them in this country?'

For the reason that the witness had testified that he had lived in and around Phoenix, Arizona, all his life, about thirty-eight years, had shipped a great many cattle out of Arizona and into California and through the town of Yuma; that he was familiar with the cattle pens of the Southern Pacific Company at Yuma; and for the reason that the witness would have testified in answer to said question, if he had been permitted to do so, and plaintiff in error expected to elicit from said witness by said question that he had never seen any cattle pens with sheds over them in this country; and for the reason that said testimony was material in view of the issues involved in the action and in view of the contention of defendant in error that the cattle pens of the Southern Pacific Company at

Yuma were not properly equipped because they did not have sheds over them."

5. Assignment of Error No. 5. (Transcript p. 196). "That the said court erred in denying and refusing to grant the motion made by plaintiff in error, defendant below, at the close of the testimony, for a directed verdict in its favor :

For the reason that it was necessary for plaintiff in error to unload the cattle at Yuma, in order to comply with the Federal Act known as the Twenty-eight Hour Law; and for the reason that plaintiff is basing his claim for damages in this action upon the fact that the cattle were unloaded at Yuma instead of transporting them on to Phoenix, Arizona, their destination.

For the reason that the defendant in error, plaintiff below, abandoned his said cattle at Yuma, upon arrival at that place and refused to have anything further to do with them and refused and neglected to care for said cattle.

For the reason that the evidence showed that if the defendant in error had taken proper care of said cattle at Yuma, Arizona, they would not have suffered any damage or injury.

For the reason that the evidence also showed that all of the alleged loss, injury and damage to said cattle was caused wholly and solely by the gross negligence, fault and want of care of the defendant in error himself.

For the reason that the undisputed evidence showed that if any loss, injury or damage occurred to said cattle the same was due to the fact that plaintiff caused said cattle to be shipped from a cool, moist climate, into an extremely hot and dry climate on the 4th of July, 1913.

For the reason that the undisputed evidence showed that if any loss or damage occurred to said cattle, the same was due wholly and solely and entirely to the climatic conditions, for which plaintiff in error was not liable or responsible.

For the reason that the undisputed evidence showed that the defendant in error, plaintiff below, knew at the time he shipped the cattle the climatic conditions then existing at Yuma, Arizona, and selected the time for such shipment, and for which plaintiff in error was not liable.

For the reason that the undisputed testimony showed that prior to or at about the time the cattle were shipped from San Luis Obispo, California, defendant in error made and entered into a contract in writing with plaintiff in error, wherein and whereby defendant in error specifically agreed that plaintiff in error should not be liable for any loss, injury or damage to said livestock resulting from heat or climatic conditions.

For the reason that the undisputed evidence showed that if any loss, injury or damage occurred to said cattle, the same was due wholly, solely and entirely to the heat and climatic conditions existing at the time at Yuma, Arizona.

For the reason that the undisputed evidence showed, and it was admitted by defendant in error that at the time of the shipment of said cattle from San Luis Obispo, California, he made and entered into a contract in writing to and with the plaintiff in error, wherein and whereby he specifically agreed and bound himself to load said livestock at point of shipment, unload and reload at resting places and to feed and water the same at his own expense and to accompany and attend said livestock enroute and to destination; and wherein and whereby defendant in error specifically agreed to attend and care for said livestock during the course of such shipment; and for the reason that the undisputed evidence showed that the defendant in error failed, neglected and refused to attend and care for said cattle at said town of Yuma, the place at which defendant in error is alleging his said cattle were injured and damaged by reason of having been unloaded for feed and rest.

For the reason that the evidence showed, and it was ad-

mitted by defendant in error, that he made and entered into a written contract, as above referred to, wherein and whereby, among other things, it was agreed by and between the parties that the plaintiff in error, the railroad company was not required to deliver said cattle to defendant in error at destination unless the transportation charges on the same were paid; and for the further reason that it was admitted by the defendant in error that he did not pay the transportation charges.

For the reason that the undisputed evidence showed that there was no negligence whatever on the part of plaintiff in error, defendant below, in the handling and transportation of said cattle.

For the reason that the evidence failed to show any negligence whatsoever on the part of plaintiff in error, defendant below, in the handling and transportation of said cattle."

6. Assignment of Error No. 6. (Transcript p. 199). "The court erred in refusing to give the special charge requested by plaintiff in error, as follows:

If you believe from the evidence that at the time the cattle mentioned in plaintiff's complaint, arrived at Yuma, Arizona, on the line of railroad operated by defendant, they had been confined in the cars approximately nineteen hours without feed and rest, and that plaintiff did not tender to or file with defendant or any of its agents any written request separate and apart from any printed bill of lading or other railroad form, authorizing defendant to confine said animals in said cars for a period of thirty-six hours from the time they had been loaded into such cars; and that defendant could not or was not reasonably sure of transporting said animals from said town of Yuma, in said cars, to Phoenix, Arizona, the place of destination, without confining said animals in said cars for a longer

period than twenty-eight hours, then your verdict should be in favor of the defendant."

For the reason that the undisputed evidence showed that defendant in error did not tender to or file with the plaintiff in error or any of its agents any written request, separate and apart from any printed bill of lading or other railroad form, authorizing plaintiff in error to confine said animals in said cars for a period of thirty-six hours from the time they had been loaded into such cars; and for the reason that the evidence showed that the plaintiff in error could not have transported said animals from the said town of Yuma, without confining said animals in the cars for a period longer than twenty-eight hours.

For the reason that the evidence showed that it was necessary for the plaintiff in error to unload said cattle at Yuma in order to comply with the Federal Act known as the Twenty-Eight Hour Law."

7. Assignment of Error No. 7. (Transcript p. 201). That said court erred in refusing the special charge requested by plaintiff in error, defendant below, as follows:

'4. If you believe from the evidence that at the time said animals arrived at Yuma, Arizona, they had been confined in the cars approximately nineteen hours without feed or rest, and that it was more humane and better for said cattle to unload them at Yuma for feed and rest than to transport them beyond that point and keep them confined in said cars, then your verdict should be in favor of the defendant.'

For the reason that the plaintiff in error introduced evidence at the trial tending to show that it was better for said cattle and more humane to unload them at Yuma for feed and rest than to have transported them beyond that point.

For the reason that one of the issues involved in said action was as to whether or not it was better for said cattle and more humane to unload them at Yuma for feed and

rest than to transport them to any other point in said cars.”

8. Assignment of Error No. 8. (Transcript p. 201).
“The court erred in refusing to give special charge requested by plaintiff in error as follows:

‘5. If you believe from the evidence that it was less injurious to said animals to unload them at Yuma for feed and rest than to have kept them confined in said cars for nine hours or eighteen hours longer, then you should find for the defendant.’

For the reason that one of the issues involved in the case was as to whether or not it was less injurious to such animals to unload them at Yuma, for feed and rest than to have kept them confined in said cars for nine hours or eighteen hours longer.

For the reason that plaintiff in error, defendant below introduced evidence tending to show that it was less injurious to unload said animals at Yuma for feed and rest than to have kept them confined in said cars for nine or eighteen hours longer.”

9. Assignment of Error No. 9. (Transcript p. 202).
“The court erred in refusing to give special charge requested by plaintiff in error, defendant below, as follows:

‘6. If you believe from the evidence that plaintiff made and entered into with defendant the written contracts as pleaded by defendant, providing that in case any loss or damage should be sustained to said animals in said shipment for which defendant would be liable, that plaintiff should make written demand on defendant within ten days after unloading said animals at destination; and that it was possible for plaintiff to have made such demand within such time, then you are instructed that plaintiff cannot recover for any loss or damage to any of the animals so delivered at destination; but you are further instructed that as to any animals that may have died in

transit; or at destination while the same were still in the possession of the railroad company, plaintiff was not required to give such notice.'

For the reason that it was admitted by defendant in error, plaintiff below, that he did make and enter into the contracts as pleaded by plaintiff in error, defendant below, and for the reason that defendant in error, plaintiff below, admitted that he had not made written demand upon plaintiff in error, defendant below, or any of its agents, within the ten days after the unloading of said animals at destination for any claim for damages for injuries to the 87 head mentioned in plaintiff's complaint; and for the reason that the evidence showed that it was possible for defendant in error to have made such demand within such time, as to said 87 head."

10. Assignment of Error No. 12. (Transcript p. 203). "The court erred in refusing to give special charge requested by plaintiff in error, as follows:

'If you believe from the evidence that plaintiff knew, or could have known by the exercise of reasonable diligence, within ten days after unloading said animals at destination that eighty-seven head of said animals were injured or damaged in the sum of twenty dollars per head, as alleged by plaintiff, and plaintiff did not, within ten days after unloading said animals at destination make written demand upon defendant or any of its agents for such alleged loss or damage, then you are instructed that plaintiff cannot recover for such alleged loss or damage.'

For the reason that the testimony of plaintiff himself shows that he knew within ten days after unloading said animals at destination that he had an alleged claim for the eighty-seven head of animals referred to, that he refused to pay the freight charges at destination giving as a reason therefor his alleged claim, and the evidence also shows that he knew or could have known by the exercise

of reasonable diligence, within ten days after the unloading of said animals at destination, whether or not he had a claim for damages to said eighty-seven head; and for the reason that the question as to whether or not defendant in error knew or could have known by the exercise of reasonable diligence within ten days after the unloading of said animals at destination whether or not he had a claim for damages to the eighty-seven head was one of the issues involved in said case and should have been submitted to the jury."

11. Assignment of Error No. 14. (Transcript p. 204). "The court erred in refusing to give special charge requested by plaintiff in error, as follows:

'11. If you believe from the evidence that plaintiff, at the time said animals were delivered by him to defendant, at San Luis Obispo, California, for transportation by defendant, over its line of railroad and the line of railroad of its connecting carrier to Phoenix, Arizona, made and entered into the contract or contracts in writing, as set forth and pleaded by defendant, wherein and whereby it was agreed and stipulated by and between plaintiff and defendant that the agreed valuation of said animals was the sum of thirty dollars per head; and that plaintiff, by reason of said stipulation that the value of said animals was the said sum of thirty dollars per head, thereby obtained lower and cheaper freight rates for the transportation of said animals from San Luis Obispo, California, to Phoenix, Arizona, than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; and that plaintiff by said contracts stipulated and agreed that in case any loss or damage should be sustained to said animals for which defendant would be liable, that the amount to be claimed by plaintiff for each of said animals, so lost or damaged should be adjusted on the basis of the value of such ani-

mals at the time and place of said shipment, to-wit: on July 1st, 1913, at San Luis Obispo, California; not exceeding the declared and agreed value thereof, to-wit, the sum of thirty dollars per head; and you further find that the loss and damage to plaintiff's said animals, as alleged, was caused by the negligence of defendant as alleged by plaintiff, to-wit: the unloading of said animals at Yuma, Arizona; then you are instructed that plaintiff cannot in any event, recover herein any greater sum for the animals that died in transit or before being removed from the pens at destination, than the said sum of thirty dollars per head and the freight charges on same; and you are further instructed that plaintiff's claim for the animals alleged to have been injured in such transportation should be adjusted on a basis of said declared and agreed valuation of thirty dollars per head and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona; and that if said animals after delivery at destination to plaintiff were of the value of thirty dollars per head, and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona, plaintiff is not entitled to recover anything for any of said animals alleged to have been injured.'

For the reason that it was shown by the undisputed evidence and by the admission of defendant in error that the contracts were made and entered into as set forth in said requested instruction; that defendant in error thereby obtained a cheaper freight rate for the transportation of said animals than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; that defendant in error agreed that in case any loss or damage be sustained to said animals for which plaintiff in error would be liable that the amount to be claimed by defendant in error for each of said animals so lost or damaged should be adjusted on the basis of the value of such animals at the time and place of

shipment, to-wit, on July 1st, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value thereof, to-wit, the sum of thirty dollars per head; that the eighty-seven head for which defendant in error was claiming injuries or damages in the sum of twenty dollars per head were worth, after having received said alleged injuries, the sum of sixty-five dollars per head, and were sold for the said sum of sixty-five dollars per head and that defendant in error did not pay any freight charges on said animals for their transportation from San Luis Obispo, California, to Phoenix, Arizona.

And for the reason that under the law the defendant was not entitled to recover anything for the alleged injuries to the eighty-seven head sued for if said eighty-seven head were worth sixty-five dollars per head after arrival at destination and after receiving the alleged injuries.

And for the reason that under the law defendant in error was not entitled to recover anything on account of the alleged injuries or damages to the eighty-seven head sued for if said animals were worth more than thirty dollars per head after arriving at destination and after receiving said alleged injuries.

For the reason that said requested instruction embodied the correct interpretation or construction of the livestock shipping contracts in evidence as to the adjustment of claims for damages for injuries to the animals involved in said shipment.

12. Assignment of Error No. 15. (Transcript p. 205).
 "The court erred in refusing to give special charge requested by plaintiff in error, as follows:

'15. If you believe from the evidence that the alleged loss and damage to plaintiff's animals was due to any other cause than unloading them at Yuma, Arizona, then you are instructed that plaintiff cannot recover and your verdict should be in favor of the defendant.'

For the reason that plaintiff in error offered evidence tending to prove that said animals were poor and weak and in a starved condition when shipped from San Luis Obispo, California, and for the reason that it was also shown by the undisputed evidence that any injury or damage suffered by said animals was caused by the heat and climatic condition and this question should have been submitted to the jury."

13. Assignment of Error No. 17. (Transcript p. 206).
"The court erred in refusing to give special charge requested by plaintiff in error, as follows:

'17. If you believe from the evidence that plaintiff caused said cattle to be brought from a cool and moist climate into Arizona in July, and into an extremely hot and dry climate, and that plaintiff knew of the climatic conditions then existing in Arizona, and the place or places to which he caused said animals to be transported; and any of the alleged loss or damage to said animals was due to such climatic conditions, then you are instructed that plaintiff cannot recover of defendant for such loss or damage.'

For the reason that it was shown by the undisputed evidence and by the testimony of defendant in error himself that said animals were brought from a cool and moist climate into Arizona, in July, into an extremely hot and dry climate, and that defendant in error knew of the climatic condition then existing in Arizona, and at Yuma, and that he selected the time for transporting said animals; and for the further reason that the undisputed evidence showed that some if not all of the alleged loss, injury or damage was caused by such climatic conditions, and for the reason that said question should have been submitted to the jury."

14. Assignment of Error No. 18. (Transcript p. 207).

"The court erred in refusing to give special charge requested by plaintiff in error, as follows:

'18. You are instructed that if plaintiff failed or neglected to attend to unloading and loading his cattle at Yuma, or failed or neglected to properly care for his said cattle while they were at Yuma, and that any of the alleged loss or damage was due to such failure on the part of plaintiff to attend to and care for said cattle, that defendant is not liable therefor, and plaintiff cannot recover for any such loss or damage.'

For the reason that defendant in error (plaintiff below) by the livestock shipping contract made and entered into by and between him and plaintiff in error, absolutely agreed and bound himself to unload and reload said animals at resting places, and to feed and water said animals at his expense, and to accompany and attend and care for said animals en route and to destination.

And for the reason that the undisputed evidence showed, and which was admitted by defendant in error, that he (defendant in error) failed, neglected and refused to assist in unloading said cattle at Yuma, and failed, neglected and refused to attend to and care for said animals at Yuma, and abandoned the same.

And for the further reason that it was admitted by defendant in error's own witness, who was one of the caretakers of said animals accompanying said shipment for defendant in error, that if defendant in error had properly attended to said animals while at Yuma, and properly taken care of the same, that none of said animals would have died.

And for the reason that it was shown by the undisputed evidence and by the admissions of defendant in error and of his own witnesses and caretakers that at least some of the injury or damage was due to the failure and neglect of defendant in error to properly care for and attend to said animals at Yuma.

And for the further reason that said question should have been submitted to the jury.

15. Assignment of Error No. 19. (Transcript p. 213).
“The court erred in refusing to give special charge requested by plaintiff in error, as follows:

‘19. You are instructed that plaintiff cannot recover of defendant for any loss or damage to his cattle resulting from heat or climatic conditions, and if you believe that the alleged loss or damage to plaintiff’s cattle was due to the heat at Yuma, or to the climatic conditions at that place, then your verdict should be in favor of the defendant.’

For the reason that the contracts in evidence specifically provided that defendant in error assumed all risk of loss or damage to said livestock, resulting from heat, or climatic conditions; that there was a sufficient consideration for such agreement; and for the reason that the undisputed evidence showed that the alleged loss and damage was due solely and entirely to the heat at Yuma and the climatic conditions at that place.

And for the reason that the undisputed evidence showed that plaintiff in error had nothing whatever to do with choosing the time of transporting said cattle, but that defendant in error himself selected the time for such transportation; that defendant in error knew before he shipped said cattle of the climatic conditions then existing at Yuma, and in Arizona; that the weather and climatic conditions at that time at Yuma were extremely hot and dry; and that it would be injurious to said animals to ship them from a moist and cool climate, as then existed in and around San Luis Obispo, California, into Arizona and through Yuma, where there existed such an extremely hot and dry climate.”

16. Assignment of Error No. 23. (Transcript p. 219).

"The court erred in charging the jury in the general charge as follows:

'In this same connection you may also determine whether or not there was on said 4th day of July, 1913, any other place or station on defendant's line which the train carrying these cattle, and operating on its schedule, could have reached within the twenty-eight hour period, at which the cattle could have been unloaded, fed, watered and rested, under conditions more favorable than existed at said town of Yuma on July 4, 1913. If you find from the evidence that the defendant had other corrals on its line of road and in the direction in which plaintiff's shipment was moving, into which plaintiff's cattle could have been unloaded within the twenty-eight hour period and in a more humane manner than by unloading at Yuma under the circumstances developed in this case, then it was the defendant's duty to transport said cattle to such station for unloading.'

For the reason that the evidence showed that at the time the cattle arrived at Yuma they had been confined in the cars, without feed, water or rest for eighteen hours and fifty-five minutes; that they had been shipped from Los Angeles, California, to Yuma, Arizona, through a hot, dry, dusty, desert country; that the train carrying said cattle would necessarily have had to remain at Yuma, in the yard at that place for the purpose of inspection, changing engines, changing crews, etc., for at least one hour before it could have departed from Yuma; that said train did actually remain at Yuma for one hour and fifteen minutes; that the next station on the line of plaintiff in error at which there were any cattle pens for unloading for feed and rest was Gila, a distance of 123 miles; that the schedule time of such a train, had the five cars of cattle remained in it, from Yuma to Gila was ten hours; that it would have taken said train ten hours to have made the run from Yuma to Gila if said five cars of cattle had remained in

said train, which would have necessitated said cattle remaining in said cars, without feed, rest or water, for approximately thirty hours, and for a longer period than twenty-eight hours.

For the reason that the evidence showed that it was better for the cattle and more humane to unload at Yuma than to have transported them any further.

For the reason that the evidence showed that plaintiff in error did not have other corrals or cattle pens on its line of road, in the direction in which the shipment was moving, into which said cattle could have been unloaded, which could have been reached by said train within twenty-eight hours from the time the cattle had been loaded in Los Angeles, California.

For the reason that the undisputed evidence showed and defendant in error admitted that he (defendant in error) abandoned said cattle at Yuma, and failed, neglected and refused to attend to or care for them, and for the reason that it was the duty of defendant in error under the contracts in evidence to attend to and care for said cattle en route to destination."

17. Assignment of Error No. 24. (Transcript p. 221).
"The court erred in charging the jury in the general charge, as follows:

"The defendant company also pleads that notwithstanding the fact that it may have been guilty of negligence in the particulars set out in the complaint, nevertheless the plaintiff in this case cannot recover, because the contract heretofore referred to (and which was signed by the plaintiff, and by Mr. Ford and Mr. Whitten, on behalf of the plaintiff, who were thereunto duly authorized) provides that the "second party hereby further agrees that in case of any loss or damage shall have been sustained for which first party is liable, demand or claim for such loss or damage will be made by the second part on the Freight

Claim Agent of the first party in writing within ten days after unloading of the livestock; and that in event of failure so to do, all claims for loss or damages in the premises are hereby expressly waived, released and made void." Defendant alleges that no claim for loss or injury to said cattle was presented to it, or any of its agents or employes within the ten-day period. If you find this to be true, then, of course, the plaintiff cannot recover unless you further find that the defendant waived this provision of the contract, or that the plaintiff was relieved from a compliance therewith as is hereinafter stated. The plaintiff in reply to this contention, that the claim should have been presented in writing within ten days after the unloading of the livestock, alleges that he was relieved from compliance with the above quoted provision in that "on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at * * * Yuma—(I say, subsequent to the arrival of said cattle at Yuma)—the defendant had full knowledge and notice of the injuries and damages to plaintiff's cattle as set forth in its said complaint; that said cattle were unloaded by the defendant into its stock pens at the station of Yuma between the hours of 9 and 10 o'clock A. M. on the 4th day of July, 1913, and between said dates and the hour of 7:30 P. M. of said day, and prior to the reloading of the cattle into defendant's cars, five of the said cows died. * * * That upon reloading the said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen of the crippled and sick cattle of the plaintiff to their destination at Phoenix; that at various points between said station of Yuma and the city of Phoenix the train officials in charge of said shipment received telegraphic inquiries from other officials of the defendant inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car

for a period of more than a week; and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the plaintiff's cows which arrived at the destination alive, were such as to render it impossible for the plaintiff, or any other person else in the exercise of due care and diligence, to determine the amount and extent of damage sustained by the plaintiff within the said ten-day period; that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of such injuries * * * that the defendant had on many occasions prior to the 21st day of October, 1913, recognized plaintiff's right to recover in some amount on account of his damages, sustained as set forth in his said complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff." I repeat those allegations of the reply in order to show what the plaintiff claims as his reason or excuse for not having presented his claim in writing to the defendant company or its agents within ten days from the date of such loss or injury, as is provided by the contracts.

I charge you as a matter of law that if you believe the defendant or its agents or employes did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in the plaintiff's complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the said provisions of said contracts.'

For the reason that the evidence showed that plaintiff in error had never waived the giving of such notice; that the defendant in error was not relieved from giving such

notice; that it was entirely possible for defendant in error to have given the notice as to his alleged claim for damages to the eighty-seven head mentioned in the complaint within the ten days.

For the reason that defendant in error admitted he knew within the ten days that he had an alleged claim for damages as to said eighty-seven head, and that he knew or should have known within the ten days the condition of the cattle.

And for the reason that any negotiations that defendant in error may have had with plaintiff in error with reference to compromise or settlement did not constitute a waiver on the part of plaintiff in error of the provisions in said contracts requiring written claim for loss or damage to be made within ten days after the animals were unloaded at destination.

18. Assignment of Error No. 25. (Transcript p. 224).
 "The court erred in charging the jury in the general charge, as follows:

"The written contracts introduced in evidence limit the liability of the defendant company to thirty dollars for each animal injured or killed, and if you find for the plaintiff you should assess the damages at not exceeding thirty dollars per head for the cattle killed and not to exceed twenty dollars per head, the amount claimed in plaintiff's complaint, for the injury caused to each of said cattle by defendant's negligence. The measure of damages in case of injury to the cattle under the contract is the amount of actual damages to each of said cattle so injured, resulting from the negligence of the defendant, its agents or employes, in no case to exceed twenty dollars per head. The measure of damages as to those that were killed is not exceeding thirty dollars per head. Shipper will not be heard to claim or recover for damages or loss, however great, in excess of the amount claimed in the bill of lading as the agreed value; nor will the carrier be allowed to deny

liability for actual damage up to that amount, except, as in this case, where a less amount is claimed in the complaint, which in this case is twenty dollars per head for each of the cattle injured and not killed. The carrier must respond for negligence up to that value but no further. If you come to the conclusion that the plaintiff is entitled to recover some damages, then, as I have heretofore stated, the measure of his damages for the eleven head of cattle that died, if you believe they died as a result of the defendant's negligence, would be not exceeding thirty dollars per head, and the measure of damages for the cattle that were injured by reason of the defendant's negligence would be the difference between the market value of the said cattle in their normal condition after making the trip from San Luis Obispo, California, to Phoenix, Arizona, and the condition in which they were actually delivered at Phoenix, but in no event can such injury or damages to each cow be placed at a figure in excess of twenty dollars; in other words, in arriving at the damages, if any, to be awarded to the plaintiff by reason of the cattle injured, if any, through the negligence of the defendant company, the measure of such damages will be the depreciation in the market value of the cattle by reason of such injury or injuries, such damages in no event, however, to exceed the sum of twenty dollars per head. If you believe that eighty-seven head of the plaintiff's cattle or any lesser number were damaged as set forth in plaintiff's complaint, and as a result of the negligent handling and transportation of the cattle by defendant, you may award the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the damages suffered by the plaintiff you can consider the market value of the cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and

you may then consider the price for which plaintiff sold his cattle in their injured condition, if you find from the evidence that the cattle *were* injured, and the difference in their market value in their normal condition and their value in their injured condition is a proper measure of plaintiff's damages, as I said before, not exceeding twenty dollars per head for the cattle injured.'

For the reason that the contracts in evidence and referred to expressly provided that in the event any of said animals sustained any loss or damage for which plaintiff in error was liable that the amount to be claimed for each animal so lost or damaged should be adjusted on the basis of the value at the time and place of shipment, to-wit, July 1, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value of thirty dollars per head, and that in no event should there be any recovery for any loss or damage to said live stock from whatever cause arising in excess of the declared and agreed value of thirty dollars per head.

And for the reason that the undisputed evidence showed and it was admitted by defendant in error that all of the said eighty-seven head mentioned in the complaint and for which defendant in error was claiming twenty dollars per head for alleged injuries, were worth more than thirty dollars per head after arrival at destination, and after having received said alleged injuries, to-wit, that they were worth sixty-five dollars per head and were sold by defendant in error after arrival at destination and after having received said alleged injuries for sixty-five dollars per head.

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And for the reason that it was not proper to adjust the alleged damages by taking the difference between the market value, or what would have been their market value in their normal condition, and their value in the condition in which the cattle were delivered at destination.

For the reason that said charge placed an erroneous construction and interpretation upon the terms of said contracts in the particulars above pointed out."

ARGUMENT.

FIRST: *First, Second Third and Fourth Assignments of Error.*

Defendant in error, plaintiff below, alleged in his complaint that the stock pens of plaintiff in error at Yuma, into which his cattle were unloaded "were very dusty and entirely unprotected from the rays of the sun" (Tr. p. 3) and introduced evidence to show that there were no sheds over the pens (Tr. pp. 83, 90, 100) claiming that the pens should have been equipped with sheds over them.

This raised an issue as to whether or not it was incumbent upon plaintiff in error to have had its stock pens at such place covered with sheds.

The questions propounded to the witnesses Casey and Davis constituted an offer by plaintiff in error to prove that the stock pens in question were just as good and as properly equipped as other stock pens in Arizona and in the Southwest and in places similarly situated and having the same climatic conditions used for unloading, feeding and resting cattle in the course of transportation; and that no stock pens of any railroad company in Arizona or in the Southwest and places similarly situated as to climatic conditions had sheds over them.

The witness Casey had testified that he had lived in Arizona and in and around Phoenix for thirty years, had been engaged in the cattle business for twenty-five years, had experience in shipping cattle in and out of Arizona, had seen and inspected the cattle pens of plaintiff in error at Yuma and had seen and inspected cattle pens in other places in Arizona and the Southwest used for unloading and feeding cattle. (Tr. pp. 132, 133).

The following question was propounded to the witness Casey by counsel for plaintiff in error.

“Q. How do the cattle pens of the Southern Pacific Company at Yuma compare with the cattle pens in other places in Arizona and in the Southwest that you have seen and observed?”

Which question was objected to by counsel for defendant in error, upon the ground that it was immaterial, which objection was sustained by the court, and which ruling was duly excepted to. (Tr. p. 133).

The witness also testified that he had shipped cattle through El Paso, Texas, by railroad, had unloaded cattle into the pens of the Southern Pacific Company at that place and had also seen the cattle pens at El Paso, Texas, of other railroad companies (Tr. p. 136). That none of the cattle pens at El Paso, Texas, had any sheds over them for shade.

Counsel for defendant in error moved to strike out the testimony of the witness as to there being no sheds over the cattle pens at El Paso, Texas, which motion was granted by the court, and which ruling was duly excepted to. (Tr. p. 136).

The following question was also propounded to the witness Casey by counsel for plaintiff in error:

“Q. Mr. Casey, how did the cattle pens of the Southern Pacific Company, at Yuma, compare with the cattle pens in other places of like climatic conditions, with reference to having sheds over them for shade?”

Which question was objected to by counsel for defendant in error upon the ground that it was not a comparative question and had no tendency to prove or disprove any issue, which objection was sustained by the court, and which ruling was duly excepted to. (Tr. p. 136).

The witness Davis testified that he was engaged in the cattle business and cattle shipping business in Arizona,

had shipped a good many cattle in and out of Arizona, was familiar with the cattle pens at Yuma. (Tr. p. 138).

It was stipulated that the record might show that the same questions were propounded to the witness Davis as were propounded to the witness Casey with reference to sheds over cattle pens at Yuma and other places in Arizona, and in the Southwest, the same objections by counsel for defendant in error, the same rulings of the court thereon and exceptions to such rulings by counsel for plaintiff in error. (Tr. p. 139).

The testimony plaintiff in error expected to elicit from the witnesses Casey and Davis was that the cattle pens of the Southern Pacific Company at Yuma were just as good and as properly equipped as other cattle pens of any other railroad company, in Arizona and in the Southwest, and places similarly situated as to climatic conditions, used for unloading and feeding cattle; that the cattle pens at Yuma were properly equipped; and that it was not necessary to have sheds over them.

The action of the court in holding that such testimony was immaterial was clearly prejudicial to plaintiff in error. The court charged the jury that it was the duty of the defendant company to unload the cattle for feed, rest and water into pens properly equipped therefor. That having heard all the evidence it was for them to determine whether or not the corrals and pens at Yuma were such as the law requires railroads to furnish for the proper unloading, feeding, resting and watering of cattle. (Tr. p. 167).

Therefore the jury should have been permitted to hear and consider the testimony of experienced cattlemen as to what kind of pens were proper pens for unloading, feeding and resting cattle, and as to whether or not a railroad company should be required to have sheds over its pens.

It seems to us that this testimony to the effect that the stock pens of the plaintiff in error at Yuma were the same

as those in use at other places similarly situated as to climatic conditions, and in use on other railroads in such places, and that no cattle pens in use in such places had sheds over them, was relevant, material and competent, in view of the issue in the case on that question, and in view of plaintiff's allegations in effect that plaintiff in error was negligent because it did not have sheds over its pens at Yuma.

The witnesses Casey and Davis were expert witnesses, qualified and competent to testify as to what kind of pens were proper for unloading, feeding and resting at Yuma, and the jury should have been permitted to consider the testimony of such expert witnesses as to whether or not cattle pens should have sheds over them, in connection with the other evidence in the case.

In the case of *St. L. & S. F. R. Co. v. Brosius, et al*, (Tex.), 105 S. W. 1131, which was a suit to recover damages to shipment of mules, a part of such damages being claimed to have been caused by unloading the mules into an unsanitary stock pen en route, the Court of Civil Appeals of Texas, in its opinion reversing the case used the following language: (p. 1134).

"The pens were open and were constructed as pens usually are constructed in Missouri. The soil was inclined to be sandy or gravel, and that the weather on this occasion was clear until late in the afternoon on January 17th. The pens were slightly muddy, but the mud was not very deep."

SECOND: *Assignment of Error No. 5. Defendant's Motion for Directed Verdict.*

The Act of Congress entitled "An Act to Prevent Cruelty to Animals while in transit by railroad or other means of transportation from one state, territory or the District of Columbia, into or through another state, territory or the District of Columbia," etc., approved June 29, 1906, 34

Stat. L, p. 607; 1909 Supp. Fed. Anntd. Statutes, p. 43, provides:

“(Sec 1.) (*Transportation of animals—time limit for confinement on cars and vessels—extension of time by written request—time of unloading and loading not included—sheep.*) That no railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessel carrying or transporting cattle, sheep, swine or other animals from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, shall confine the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner, into properly equipped pens for rest, water, and feeding, for a period of five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes which can not be anticipated or avoided by the exercise of due diligence and foresight: *Provided*, That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours. In estimating such confinement, the time consumed in loading and unloading shall not be considered, but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent of this Act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated: *Provided*;, That it shall not be required that sheep be unloaded in the night time, but

where the time expires in the night time in case of sheep the same may continue in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours.

Sec. 2. (*Feeding animals at expense of owner—lien upon animals for costs—owner may furnish food.*) That animals so unloaded shall be properly fed and watered during such rest either by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad, express company, car company, common carrier other than by water, or the receiver, trustee or lessee of any of them, or by the owners or masters of boats or vessels transporting the same, at the reasonable expense of the owner or person in custody thereof, and such railroad, express company, car company, common carrier other than by water, receiver, trustee, or lessee of any of them, owners or masters, shall in such case have a lien upon such animals for food, care, and custody furnished, collectible at their destination in the same manner as the transportation charges are collected, and shall not be liable for any detention of such animals, when such detention is of reasonable duration, to enable compliance with section one of this Act; but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires."

Sec. 3. (*Penalty for non-compliance—exception.*) That any railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or the master or owner of any steam, sailing, or other vessel who knowingly and wilfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars: *Provided*, That when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity to rest the provisions in regard to their being unloaded shall not apply."

The cows were loaded at San Luis Obispo, California, on July 1, 1913, in the afternoon, arriving at Los Angeles, on July 2, were unloaded there about noon of that day, for feed, water and rest and in order that they might be milked (Tr. p. 82-98-142). They were loaded into the cars again at Los Angeles on the afternoon of July 3rd. (Tr. p. 143).

The plaintiff testified he did not keep any record of the exact time of reloading at Los Angeles. (Tr. p. 87).

Witness for plaintiff in error, F. D. Martin, testified by deposition that he was employed as corral keeper for defendant company at Los Angeles on July 2 and 3, 1913, that he unloaded, fed and watered these animals at that place, that he made a record at the time of the date and time of unloading and reloading, and produced such original record. (Tr. p. 142). That the cattle were unloaded at Los Angeles at 2:45 and 3:00 p. m. on July 2, 1913, and were reloaded at 3:40 and 4:25 p. m. (Pacific Time) the following day, July 3rd. (Tr. p. 142-143).

Witness William Wilson testified that in July, 1913, he was Chief Train Dispatcher for plaintiff in error company, with jurisdiction over the road from Yuma, Arizona, to El Paso, Texas. That as such he had charge of handling of all cattle shipments over the road, that he was on duty at Tucson, at Division Headquarters on July 4, 1913. (Tr. p. 113). That these cattle arrived at Yuma at 11:35 a. m. Mountain Time, same as 10:35 a. m. Pacific Time, on July 4th. (Tr. p. 117).

Witness Howard testified that he was Train Dispatcher on duty at Tucson from eight o'clock in the forenoon until four o'clock in the afternoon of July 4th, that he had jurisdiction over the road from Tucson to Yuma. (Tr. p. 122). That he wrote down on the train sheet the time of the arrival at Yuma of the train containing the five cars of cattle, at the time of the arrival of such train. The witness identified the original train sheet made by him on

July 4th, and the figures written thereon by himself at the time as to the time of the arrival of the train at Yuma, 11:30 a. m., Mountain Time. (Tr. p. 122-123).

The original train sheet so identified was admitted in evidence and that portion pertaining to the train which brought these cattle into Yuma is in the record. (Tr. pp. 117, 189). The train sheet shows that the train in question, "Second 244," arrived at Yuma at 11:35 (Mountain Time), which is the same as 10:35 (Pacific Time). (Tr. p. 189).

Defendant in error and his witnesses testified that the train arrived at Yuma about nine o'clock in the morning of July 4th (Tr. pp. 83, 89, 98), but they made no record at the time of the exact time of such arrival and had no record, but were testifying from memory, (Tr. pp. 87, 92, 98), more than two years after the occurrence, and in the face of the positive and almost incontrovertible evidence of Chief Dispatcher Wilson and Dispatcher Howard and the record made at the time on the train sheet, that the train arrived at Yuma at 11:35 a. m., Mountain Time.

Therefore, upon arrival at Yuma, the cattle had been confined in the cars without feed, water or rest for a period of eighteen hours and ten minutes, and counting from the time the loading was commenced at Los Angeles, 3:40 p. m., July 3rd, to 10:35 a. m. of July 4th, they had been on the cars for eighteen hours and fifty-five minutes.

Chief Dispatcher Wilson testified that if the cattle had been transported on from Yuma, without unloading, and in the same train which brought them in, that it would have taken the train about one hour and ten minutes to have gotten out of Yuma (Tr. p. 118), which would have meant that the cattle would have been in the cars at the time of leaving Yuma for at least nineteen hours and twenty minutes (from the time loading was completed in Los Angeles), with only eight hours and forty minutes of

the twenty-eight left to get them to the next unloading point.

But defendant in error is basing his right to recover upon the allegation that plaintiff in error unloaded the animals at Yuma instead of transporting them on to Phoenix, the destination, without unloading for feed and rest. (See Compl. Tr. p. 5).

If the cattle had been transported on to Phoenix after arrival at Yuma, without unloading at Yuma, they would have been in the cars in the neighborhood of thirty-six hours and thirty minutes or thirty-seven hours. (Tr.p.117).

It was absolutely impossible to have transported them on from Yuma to Phoenix within the twenty-eight hours (Tr. p.p. 117-118).

We contend this is a complete defense to this action. In other words that the plaintiff in error was not guilty of any negligence in unloading the animals at Yuma for feed, water and rest in order to comply with the Federal Act known as the Twenty-eight Hour Law, which defense plaintiff in error set up by plea and answer. (Tr. pp. 13 to 18, inc., 29 to 34, inc.).

St. L. & I. M. Ry. Co. v. Davenport (Ark.) 133
S. W. 186:

"It was the duty of the railroad company to stop the shipment for rest, water and feeding of the cattle at a convenient place which it could select, if not unreasonably or arbitrarily done, when it was apparent that it could not be delivered at destination in the usual course of business within the 28-hour limit, appellee having refused to sign the 36-hour release and such delay in the performance of this duty was not negligence on its part."

Hickey v. C. B. & Q. R. R. Co. (Mo. App.) 160
S. W. 24:

"A delay caused solely by defendant's compliance with the provisions of the Twenty-eight Hour Law could not be actionable, since it should be regarded

as the result of the performance of a duty imposed by law.”

K. C. M. & O. Ry. Co. v. Moore (Tex. Civ. App.)
149 S. W. 302:

In this case negligence was charged against the carrier because the animals were delayed in transit and also because the pens into which they were unloaded were unsanitary.

The court said: “It is clear from the testimony that no negligence is shown on the part of the appellant or any of its employees in unloading and detaining the stock at Monette for the time they did. The law requires that stock being shipped over railroad lines shall not be kept longer than 28 hours without being unloaded, watered, fed and rested. Appellant had the right if it was not its duty to unload and rest this carload of stock at the time and place it did. They had been in transit from the time they were loaded about nineteen hours and could not have been carried much longer without violating the provisions of the Federal law upon that subject.”

Ecton v. C. B. & Q. Ry Co., (Mo. App.) 102 S. W.
575:

“Where a reasonable time for the transportation of an interstate shipment of cattle exceeded 28 hours which was the longest time the carrier was authorized to keep the cattle in the cars without unloading for rest, food and water, as provided by Rev. Stats. U. S. Sec. 4386 (U. S. Com. Stat. 1901, p. 2995) and if time had not been lost by delays the transportation period would not have been less than 28 hours, delay caused by the carriers unloading cattle in transit for rest, food and water under such act was not negligence.”

In the case of *Oregon-Washington R. & Nav. Co. v. United States*, 205 Fed. 337, this court said:

“The statute (the Twenty-eight Hour Law) imposes upon the carrier the primary duty of seeing that the stock is not confined in cars longer than the pre-

scribed period, for the command of the statute is 'Thou Shalt Not' fail to do the thing required; and, while the carrier may arrange with the shipper or the person in charge for unloading, the company cannot thereby shift the burden, and the responsibility for unloading in time still rests with it. The company, therefore, having knowledge of the attending conditions, which intentionally disregards the statute, or is purposely indifferent to its behests, is rendered amenable thereto."

St. L., I. M. & S. Ry. Co. v. Smith, (Texas) 135 S. W. 597:

In this case the court said: "The testimony was undisputed that the cattle could not be transported from Texarkana to St. Louis within 28 hours. It was necessary therefore for appellant, to avoid violating the statute referred to (U. S. Rev. St., Sec. 4386, 4388, U. S. Comp. Sts. 1901, pp. 2995-2996) to unload the cattle en route for the purpose of feeding and watering them and permitting them to rest for at least five hours. It could not be charged with negligence for a delay necessary to avoid a violation of the law, and the jury should have been instructed to that effect."

It will be noted that the defendant in error, plaintiff below, alleged in his reply to the answer of plaintiff in error, that upon the arrival of the cattle at Yuma, he tendered a request in writing, separate and apart from his shipping contract, to plaintiff in error, extending the time for unloading and resting to thirty-six hours (Tr. p. 48), but upon the trial it was shown conclusively that no such written request had been tendered and the court charged the jury in this connection that: "The plaintiff having failed to sign and tender such written request, the defendant company was required by the United States Statutes to unload, feed, water and rest the said cattle at some point on its line of railroad within twenty-eight hours from the time the same left Los Angeles, California." (Tr. p. 167).

If these cattle had been transported on from Yuma without unloading, to the next unloading point, Gila, in the same train, it would have taken about ten hours to have made the run (Tr. p. 119, 120, 121), which would have exceeded the 28-hour limit.

It is true this same train did reach Gila at 7:20 p. m., barely within the twenty-eight hours, but it would not have arrived at Gila as soon as it did if it had taken the five cars of cattle. (Tr. p. 119). The tonnage of this train was reduced by taking out the five cars of cattle (Tr. p. 121), otherwise it would have taken it two hours longer. (Tr. p. 121).

If the five cars of cattle had remained in the train it would have been necessary to double one of the hills which would have caused a delay of one hour, and with the extra five cars of cattle the train would have been unable to make the time it did. (Tr. p. 121).

Defendant in error, plaintiff below, testified that he abandoned his cattle at Yuma (Tr. p. 83) and that he boarded a passenger train at Yuma and went on to Phoenix, leaving his cattle at Yuma. (Tr. p. 88). His two caretakers also abandoned the cattle at Yuma and neglected to properly care for them. (Tr. pp. 83, 90, 93, 102).

The witness Ford, one of the caretakers and a witness for defendant in error, testified that "if we had poured water on the cattle immediately upon unloading at Yuma and kept pouring water on them undoubtedly we could have kept them from getting hot and that would have saved them. If we had stayed there and poured water on them it would have kept them from getting overheated. (Tr. p. 93).

The witness Ford also testified that the defendant in error, Stewart, refused to go down and help take care of the cattle (Tr. p. 93) and that he, Ford, did not help take care of them until they were dying from the heat. (Tr. p. 93).

In this connection, by the contract in evidence, defendant in error agreed to load said livestock at point of shipment, unload and reload at resting places, and unload at destination, and to feed and water at his expense, and to accompany and attend said livestock en route to destination. (Tr. p. 188).

In the case of *Webster v. Union Pacific R. Co.*, 200 Fed. 597, it was held that such an agreement was valid as between the shipper and the railroad company. That such an agreement did not contravene the provisions of the Federal Act known as the Twenty-eight Hour Law, since that Act in terms provides that the owner of the animals shall primarily be charged with feeding and watering them. That while such provision would not afford any defense to a prosecution by the government for failure of the railroad company, upon the owner's default, it is, as between the owner and the railroad, a sufficient defense, since it is tantamount to an allegation that the railroad company was not itself negligent, but that the negligence was that of the owner of the animals in and about a matter as to which such owner had contracted to assume the sole responsibility. Citing *Mo. Pac. Ry. Co. v. T. & P. Ry. Co.*, 41 Fed. 913.

The contracts under which the shipment moved contained a provision, among others, that the shipper, defendant in error, assumed all risk of loss or damage of or to said livestock resulting from heat, suffocation or climatic conditions. (Tr. pp. 23, 25, 27).

Defendant in error, plaintiff below, testified that he had lived in Arizona for fifteen years, had been engaged in the cattle business for a couple of years, had shipped cattle into Arizona from San Luis Obispo, California, that San Luis Obispo is near the coast, that it was not hot where he obtained the cattle involved in this suit, that he knew it was pretty warm around Phoenix and Yuma, Arizona,

in July, that he knew it was warm through Southern California at that season of the year where the cattle had to pass through, and that he selected the time for shipping the cattle. (Tr. p. 86).

The witness Ford testified that he formerly resided near San Luis Obispo, California, (Tr. p. 88), that San Luis Obispo has a good climate, that the fog comes in from the ocean, that the climate of San Luis Obispo in the summer time is much cooler than that of Arizona. (Tr. p. 92).

Our contention is that the undisputed evidence showed conclusively that any injury or damage to the cattle was due solely and entirely to the fact that the cattle were shipped from a cool, moist climate into an extremely hot and dry climate in the month of July, that such injury or damage was due solely to the climatic conditions, that defendant in error knew of such climatic conditions and himself selected the time to ship said cattle and that plaintiff in error is not therefore liable for any such injury or damage.

L. & N. R. Co. v. Warfield, (Ky.) 98 S. W. 313:

Quoting from the syllabus: "A carrier is not liable for the loss or injury to livestock caused by unprecedented climatic conditions where the provisions for the protection of stock are sufficient for ordinary conditions."

In this case it appears that the animals were unloaded into open pens in which all livestock handled by the railroad company was handled and fed.

The court said: "The stock pens at each of the points mentioned were sufficient to properly care for and protect the stock received at that point for shipment, or unloaded to be fed at that point under usual weather conditions."

Winn v. American Express Co., Iowa 140 N. W. 427:

Quoting from the syllabus: "In an action against an express company for the death of a thoroughbred hog while being carried on an express wagon due to

excessive heat, evidence held insufficient to warrant a finding of negligence."

"Negligence of an express company will not be presumed from the fact that a thoroughbred hog died while being carried in a crate on an express wagon on a hot day where plaintiff shipper accompanied the wagon and knew every detail of what occurred."

"A shipper of a thoroughbred hog, and not the carrier, assumed the risk of the hog dying from being overheated, due to climatic conditions."

Colsch v. C., M. & St. P. Ry. Co., (Iowa) 127) N. W. 198:

Quoting from the syllabus: "A carrier of livestock accompanied by the shipper is not bound to use the highest degree of care to avoid injury to the stock through freezing; ordinary care being sufficient."

Elliott on Railroads, Second Ed., Vol. 4, Secs. 1548 and 1549:

"1548d. *Extraordinary climatic conditions*—Applying the principle which exonerates the carrier from liability for loss of goods attributable to an act of God as explained in earlier sections, it has been held that a carrier is not liable for loss or injury to livestock caused by unprecedented climatic conditions—as, for example, where animals contract pneumonia from an unusual drop in the temperature—if the carrier has otherwise made such provisions for protection of stock as are sufficient for ordinary conditions."

"1549. *Rule where owner accompanies the stock*—The fact that the owner, or his agent, is furnished transportation by the carrier and goes with his cattle or horses to look after and care for them, especially if he has agreed to do so in the contract of carriage, often exerts an important influence in determining the duties and liabilities of the carrier in the particular case. As we shall hereafter show it may relieve the carrier from the duty to feed and water and otherwise give particular attention to the stock, but it will not relieve the carrier from the duty to afford the owner reasonable opportunities for so doing. The

fact that the owner accompanies the stock and takes charge of it may also be important upon the question of contributory negligence. So, where the owner accompanies the stock, under a special contract to care for them himself, he may well be presumed to be as well acquainted with the facts in regard to their loss or injury as the carrier, and as they may have been injured because of his own negligence, or because of their inherent nature and propensities, and not by the negligence of the carrier, it is but just to require him to show the facts. The rule in such cases, therefore, is that the burden of proof is upon the plaintiff to show that a breach of duty upon the part of the carrier caused the injury or loss, and if the carrier is liable only for negligence the burden is upon the plaintiff to show such negligence."

The burden of proof as to the negligence is upon the shipper and if the question was left in doubt as to what the cause of the damage was, then the defendant carrier would be entitled to the verdict.

Hutchinson on Carriers, Third Ed., Vol. 3, Sec. 1355, 1356, 1357.

Cleve v. C., B. & Q. R. Co., (Neb.) 120 N. W. 959:

"A railroad company shipping stock accompanied by the owner is not liable for loss occasioned by excessive heat in transit in the absence of competent evidence of negligence."

In this case the evidence showed that the plaintiff's employees were in charge of the cattle in transit; that the day of shipment was very hot and very little air circulating; and that the steers died as a result of the excessive heat to which they were subjected while the train was stopped at a station.

Wilke v. I. C. R. Co., (Iowa) 133 N. W. 746.

THIRD.—*Sixth Assignment of Error.*

This relates to the instruction requested by plaintiff in error, "that if the jury believed defendant in error did

not tender the thirty-six hour release, and that plaintiff in error could not or was not reasonably sure of transporting said animals on to destination, Phoenix, within the twenty-eight hours, the verdict should be for defendant."

The evidence, as heretofore pointed out, warranted the giving of this instruction. Defendant in error did not in his complaint base his claim for damages upon the ground that the carrier did not transport the animals to some point beyond Yuma other than destination, but bottomed his case upon the failure of the carrier to transport the animals all the way to destination without unloading for feed, water and rest. (Tr. p. 5).

In support of this assignment we will cite the same authorities cited in support of Assignment No. 5.

FOURTH.—*Seventh and Eighth Assignments of Error.*

This relates to the special charge requested by plaintiff in error that if the jury believed the animals upon arrival at Yuma had been confined in the cars approximately nineteen hours without feed or rest and that it was more humane and better for the animals to unload them at Yuma for feed and rest than to transport them beyond that point and keep them confined in the cars the verdict should be for the defendant; and to the special charge requested by plaintiff in error that if the jury believed it was less injurious to the animals to unload them at Yuma for feed and rest than to have kept them confined in the cars for nine or eighteen hours longer the verdict should be for defendant.

An expert witness produced by defendant in error, A. N. Gurley, a veterinary surgeon, testified that dairy cows, such as these animals were, ought to be milked twice in every twenty-four hours, and failure to do so would result in serious injury to them; that they should have access to

water continuously; that nineteen hours was too long a time for a dairy cow to go without a drink, especially in hot weather, and in the kind of weather prevailing at Yuma; and that it would have been much better for these cows to be unloaded at Yuma to be milked and watered than to be transported on any further (Tr. pp. 108, 109) and especially after bringing them from a cool, moist climate into Arizona in July (Tr. p. 109).

The witness also testified that it was better for the cattle to be unloaded and watered and reloaded at Yuma than to have brought them on to Phoenix, to destination (Tr. pp. 110, 111).

Witness Casey, an experienced cattle man also testified that it was better to unload the animals at Yuma for feed, water and rest than to have transported them to Phoenix (Tr. pp. 133, 134, 135).

Witness Davis, an experienced cattleman, also testified to the same effect. (Tr. pp. 138, 139, 140).

This was one of the principal issues of fact involved in the action, and should have been submitted to the jury, and the refusal of the court to give the special charges requested was prejudicial to plaintiff in error.

FIFTH.—*Ninth, Twelfth and Twenty-Fourth Assignments of Error—Failure of Defendant in Error to Give Plaintiff in Error Written Notice of his Claim within Ten Days.*

The ninth assignment relates to refusal of the court to grant a special charge requested by plaintiff in error, to the effect that if it was possible for defendant in error to have made the demand within the time he could not recover for any loss or damage to the animals actually delivered at destination.

The twelfth assignment relates to refusal of the court to grant special charge requested by plaintiff in error to

the effect that if the jury believed defendant in error knew or could have known by the exercise of reasonable diligence within ten days after unloading the animals at destination that 87 head were injured or damaged \$20.00 per head, and did not within the ten days give the notice, he could not recover for such alleged loss or damage.

The twenty-fourth assignment relates to a portion of the general charge of the court with reference to defendant in error being relieved from giving such notice, and to the plaintiff in error having waived the giving of the notice, which portion of the charge was duly excepted to.

Defendant in error admitted making the contracts as pleaded by plaintiff in error (Tr. p. 86) and the contracts were admitted in evidence (Tr. p. 112).

These contracts contain a provision as follows:

“Second party (Stewart) hereby further agrees that in case any loss or damage shall have been sustained for which first party (Southern Pacific Co.) is liable, demand or claim for such loss or damage will be made by second party on the Freight Claim Agent of the first party in writing within ten days after unloading of the livestock; and that in event of failure so to do all claims for loss or damage in the premises are hereby expressly waived, released and made void (Tr. p. 188).

Defendant in error admitted that he did not present any claim in writing to plaintiff in error or any of its agents within ten days and that he first presented such claim on or about October 2, 1913, long after the expiration of the ten days. (Tr. p. 85).

We concede that defendant in error would not be required to present his claim within the ten days as to any of the animals that died en route and before delivery at destination and the two requested instructions on this point only refer to the alleged claim for damages to the animals actually delivered at destination.

The court charged the jury in substance that if they believed defendant was negotiating with plaintiff for a settlement of his claim and that defendant knew the cattle had been injured as alleged, then the plaintiff was relieved and released from giving the notice within the ten days as required by the provision in the contract.

Defendant in error testified that he would not and did not pay the freight charges on the cattle when they arrived at Phoenix because his claim for damages was not adjusted (Tr. pp. 85, 88) but drove them away without paying the freight. (Tr. p. 88).

Defendant in error testified that within four or five days after delivery of the cattle a representative of plaintiff in error called on him at Phoenix and took up with him the question of settlement or adjustment of his claim. (Tr. p. 85).

The provision referred to in the contract did not require the shipper to itemize his claim and did not require him to verify such claim.

If the contract had required the shipper to file his claim within one day after unloading at destination, or had required the claim for damages to be itemized and sworn to, then it might be said that such requirement was unreasonable and the shipper would be relieved from complying with it.

The case of *Kidwell v. Oregon Short Line Railroad Company* decided by this court, 208 Fed. 1, we think, disposes of the questions raised by our assignments of error with reference to the "ten days' notice." In that case it appears that the shipper notified the agent of the carrier at Shoshone, en route, that he was going to put in a claim for side-tracking the cattle and "handling them bad;" that when he got to American Falls, another station en route, he told the agent of the company there would be a claim against the company for damages

sustained and injury to the cattle: That when he got to Laramie City, another station en route, he told the agent there that there would be a claim for damages on the "Short Line," and possibly some of it on the Union Pacific going south to Omaha; and that after the cattle were sold at South Omaha he talked with the agent there and told him the same thing, and that the agent advised him to put in the claim at Portland. The claim was put in at Portland, but it was after the expiration of ten days from the unloading of the stock at destination. This court in its opinion in the case said:

"If, on arrival of livestock at destination, the shipper, who, as in this case accompanies them, finds that they have been injured by the negligence of the carrier, it is a reasonable provision of the shipping contract that he give notice to the carrier of the extent, nature, and amount of his claim for damages, and that this shall be done before the stock are mingled with other stock in order that the carrier may have the opportunity to make timely investigation and protect itself against fictitious or imaginary claims. It is no compliance with such a provision to remark to a freight agent of the carrier along the line of the route that the shipper is going to put in a claim for damages. Nor is it a compliance to inform the agent at the place of destination that there will be a claim against the company for damages. To impart the information that a claim will be presented is not to present 'a claim for loss, damage, or detention.' It does not inform the carrier of the nature, extent, amount, or cause of damage, it gives no definite statement of facts upon which an investigation may be had, or which shows that an investigation is required.

"(2) A stipulation that notice of a claim for damages be given before the stock is removed or intermingled with other stock, as a condition precedent to recovery, is a reasonable one, and it has been so held by the Supreme Court of the State in which the contract in this case was made. *Smith Meat Co. v. Ore-*

gon R. & N. Co., 59 Ore. 206, 117 Pac. 303. And such is the uniform ruling of other courts on the same question. *Clegg vs. S. Louis & S. F. R. Co.* (C. C. A.) 203 Fed. 971; *Metropolitan Trust Co. v. Toledo, S. L. & K. R. Co.* (C. C.) 107 Fed. 628; *Parill v. Cleveland, C., C. & St. L. Ry. Co.*, 23 Ind. App. 638, 55 N. E. 1026; *Austin v. Railroad*, 151 N. C. 137, 65 S. E. 757; *Wichita & Western Ry. v. Koch*, 47 Kan. 753, 28 Pac. 1013; *Atlantic Coast Line R. Co. v. Bryan*, 109 Va. 523, 65 S. E. 30; *Southern Ry. Co. v. Adams*, 115 Ga. 705, 42 S. E. 25; *St. Louis & S. F. R. Co. v. Ladd*, 33 Okl. 160, 124 Pac. 461. There was nothing in the circumstances, as disclosed by the record in the case at bar, to render the requirement of the notice negligible or impracticable, as in the case of *Chicago, R. I. & P. Ry. Co. v. Spears*, 31 Okl. 469, 122 Pac. 228. Nor was there any waiver of the notice on the part of the defendant. There was no error, therefore, in granting the nonsuit."

In the case of *C., R. I. & P. Ry. Co. v. Spears* (Okl.) 122 Pac. 228, referred to by this court in above case of *Kidwell v. O. S. L. R. Co.*, the provision of the livestock shipping contract involved was one requiring the shipper to file his claim in writing immediately and before the animals were removed from the point of shipment or from the place of destination.

Other cases:

St. L. & S. F. Ry. Co., v. Zickapoose (Okl.) 135 Pac. 406.

Coffin v. A. T. & S. F. Ry. Co., 13 Ariz. 144, 108 Pac. 480.

Kramer v. C. M. & St. P. Ry. Co. (Iowa) 70 N. W. 119.

Libbey v. St. L. & I. M. S. Ry. Co. (Mo.) ~~177~~¹¹⁷ S. W. 659.

Wright v. C. B. & Q. R. Co. (Mo.) 94 S. W. 555.

St. L. & S. F. R. Co. v. Cox (Okl.) 138 Pac. 144.

Howard & Callahan v. I. C. R. Co. (Ky.) 171 S. W. 442.

Smith v. St. L. S. W. Ry. Co. (Mo.) 171 S. W. 635.

Bowman v. M. K. & T. Ry. Co. (Mo.) 171 S. W. 642.

The case of *Clegg v. St. L. & S. F. R. Co.*, (C. C. A., 8th Circuit) 203 Fed. 971, is directly in point on the question of waiver of the notice by the carrier.

In that case plaintiff pleaded that the general freight claim agent of the defendant carrier, with full authority to handle, deal with and adjust all claims against the defendant arising from the handling of livestock and freight, received notice of plaintiff's claim without objection as to the time of presentation, or the manner and form thereof, and that he negotiated with plaintiff, both orally and in writing on the subject of said claim; that by reason thereof the defendant waived the terms of the livestock shipping contract in question.

The court held that this did not constitute a waiver by defendant carrier of the provisions regarding the giving of notice.

We contend that this question is governed and controlled by the decision of the Federal Courts, because it comes under the Federal Act, the Carmack Amendment.

M. K. & T. Ry. Co. v. Harrison, 227 U. S. 657, 57 L. Ed. 690.

SIXTH.—*Fifteenth Assignment of Error.*

This relates to refusal of the court to give special charge requested by plaintiff in error, defendant below, to the effect that if the jury believed the alleged loss or damage was due to any other cause than unloading at Yuma, the verdict should be in favor of defendant.

Defendant in error, plaintiff below, in his complaint, based his claim for damages upon the fact that plaintiff in error, defendant below, unloaded the animals at Yuma instead of transporting them on to Phoenix. (Tr. p. 5). This is the only negligence alleged in the complaint and defendant in error, if entitled to recover at all, was not entitled to recover on any other ground.

Witness Witkosky, an experienced cattleman, testified that he saw one of these cows shipped by Mr. Stewart from San Luis Obispo, that the cow was so poor and weak that she could not travel and fell down in the road to San Luis Obispo and that there was very little feed on the range at that time for cattle around San Luis Obispo. (Tr. p. 140).

Witnesses Ed Peterson and Millard Petersen, experienced cattlemen residing at San Luis Obispo, testified they helped to drive some of these cattle to the station of San Luis Obispo when they were shipped, that the cattle were in very poor condition and weak, and that the feed on the range where the cattle came from was very scarce. (Tr. pp. 141, 142).

Plaintiff in error, defendant below, in its answer pleaded this as a defense. (Tr. pp. 38, 39).

As this was an issue of fact raised by the pleadings and supported by the testimony, we contend that it should have been submitted to the jury. If any of the alleged loss or damage was due to the condition of the cattle when shipped, it follows that plaintiff in error was not liable therefor.

SEVENTH.—*Seventeenth and Nineteenth Assignments of Error.*

This relates to special charges requested by plaintiff in error, defendant below, to the effect that if the alleged loss or damage to said cattle was due to the heat or to climatic conditions, plaintiff could not recover; and that if *any* of the alleged loss or damage was due to such causes, plaintiff could not recover for such loss or damage.

As heretofore mentioned, the contracts in evidence provided among other things, that the shipper assumed all risk of loss or damage of or to said livestock resulting from heat, suffocation or climatic conditions. (Tr. pp. 23, 25, 27).

This issue was raised by the pleadings, the plaintiff in error, defendant below, set up and pleaded this as a defense in its answer. (Tr. pp. 39, 40).

Plaintiff Stewart testified that he had lived in Arizona for fifteen years, had been engaged in the cattle business for a couple of years, had shipped cattle into Arizona from San Luis Obispo, California; that San Luis Obispo is near the coast; that it was not hot where he obtained the cattle; that he knew it was pretty warm around Phoenix and Yuma, Arizona, in July; that he knew it was warm through Southern California at that season of the year where the cattle had to pass through; and that he selected the time for making the shipment. (Tr. p. 86).

Witness Ford, a former resident of San Luis Obispo, testified that the climate of that place is much cooler than that of Arizona. (Tr. p. 92).

Even in the absence of any agreement the general rule seems to be that a carrier is not liable for damages for injuries to livestock caused by heat or climatic conditions.

L. & N. R. Co. v. Warfield, supra.
Winn v. American Exp. Co., supra
Colsach v. C. M. & St. P. Ry. Co., supra.
Cleve v. C. B. & Q. R. Co., supra.
Elliott on Railroads, 2nd Ed., supra.

EIGHTH.—*Eighteenth Assignment of Error.*

Failure of defendant in error, Stewart, to properly attend to and care for his cattle while they were at Yuma.

Under the contracts Stewart agreed to unload and reload the animals at resting places, and to feed and water at his own expense, and to accompany and attend and care for said animals en route and to destination.

Plaintiff Stewart testified that he arrived at Yuma with the shipment about nine o'clock in the morning of July 4th, that neither he nor any of his men had anything to do with unloading the cattle; that he did not go to the

stock yards until about five o'clock in the evening. (Tr. p. 83). That he boarded a passenger train at Yuma and went to Phoenix. (Tr. p. 88).

Witness Ford, who accompanied the shipment as one of the caretakers, testified that the cattle had water when they arrived at Yuma; that he supposed if they had poured water on them immediately upon unloading at Yuma and kept pouring water on them undoubtedly they would have kept them from getting hot and that would have saved them; that if they (the caretakers) had stayed there and poured water on them it would have kept them from getting overheated. (Tr. p. 93). This witness also testified that Stewart did not help take care of the cattle at Yuma, and that he (Mr. Stewart) refused to help take care of the cattle. (Tr. p. 93).

Webster v. Union Pac. R. R. Co., supra.

NINTH.—*Twenty-Third Assignment of Error.*

This relates to that portion of the general charge of the court wherein the jury was instructed in effect that it was the positive duty of the carrier to have transported the cattle to some other station beyond Yuma, on its line of railroad, if the jury found that the railroad company had other corrals on its line of road in the direction in which the shipment was moving into which the cattle could have been unloaded within the twenty-eight hour period.

We have heretofore, under the second division of our argument (Assignment No. 5, Request for directed verdict) pointed out the testimony, with reference to pages of transcript, showing that at the time the cattle arrived at Yuma they had been confined in the cars without feed, water or rest for eighteen hours and fifty-five minutes; that they had been shipped from Los Angeles, California, to Yuma, Arizona, through a hot, dry, dusty, desert country; that the train carrying the cattle would necessarily have

had to remain at Yuma, in the yard, for the purpose of inspection, changing engines, changing crews, etc., for at least one hour; that said train did actually remain at Yuma for one hour and fifteen minutes; that the next station at which there were cattle pens was Gila, a distance of 123 miles; that the schedule time of such a train, had the five cars of cattle remained in it, from Yuma to Gila was ten hours; and that it would have taken said train ten hours to have made the run from Yuma to Gila if said five cars of cattle had remained in said train, which would have necessitated said cattle remaining in said cars, without feed, rest or water, for approximately thirty hours, and for a longer period than twenty-eight hours.

In view of this positive and uncontradicted testimony as to the length of time it would have taken for this train to have reached Gila Station, had the five cars of cattle remained in the train, this portion of the court's general charge was erroneous, because it meant in effect that the railroad company should take chances on getting the cattle to the next station and unloaded within the twenty-eight hour period.

The better rule would seem to be that the Twenty-eight Hour Law makes it the positive duty of the carrier to unload the animals for feed, water and rest within twenty-eight hours, and that if there is any doubt as to whether or not the shipment can reach another unloading point within the prescribed period, or if the carrier is not reasonably sure that the next unloading point can be reached within the time, that the carrier should not take any chances but should unload.

Act of Congress approved June 29, 1906, Twenty-eight Hour Law, *supra*.

St. L. & I. M. Ry. Co. v. Davenport, *supra*.

Hickey v. C. B. & Q. R. R. Co., *supra*

K. C. M. & O. Ry. Co. v. Moore, *supra*.

Ecton v. C. B. & Q. Ry. Co., supra.

Oregon-Washington R. & N. Co. v. United States,
supra.

St. L. & I. M. S. Ry. Co., v. Smith, supra.

TENTH.—*Fourteenth and Twenty-Fifth Assignments of Error.*

Agreed Valuation.

Plaintiff in error, defendant below, requested the following special charge which was refused by the court (Tr. pp. 207 to 209, inc.), and to which ruling defendant duly excepted. (Tr. p. 177).

“If you believe from the evidence that plaintiff, at the time said animals were delivered by him to defendant, at San Luis Obispo, California, for transportation by defendant, over its line of railroad and the line of railroad of its connecting carrier to Phoenix, Arizona, made and entered into the contract or contracts in writing, as set forth and pleaded by defendant, wherein and whereby it was agreed and stipulated by and between plaintiff and defendant that the agreed valuation of said animals was the sum of thirty dollars per head; and that plaintiff, by reason of said stipulation that the value of said animals was the said sum of thirty dollars per head, thereby obtained lower and cheaper freight rates for the transportation of said animals from San Luis Obispo, California, to Phoenix, Arizona, than would have been applicable to or assessed upon said shipment had a higher valuation been placed upon said animals; and that plaintiff by said contracts stipulated and agreed that in case any loss or damage should be sustained to said animals for which defendant would be liable, that the amount to be claimed by plaintiff for each of said animals, so lost or damaged, should be adjusted on the basis of the value of such animals at the time and place of said shipment, to-wit, on

July 1st, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value thereof, to-wit, the sum of thirty dollars per head; and you further find that the loss and damage to the plaintiff's said animals, as alleged, was caused by the negligence of defendant as alleged by plaintiff, to-wit: the unloading of said animals at Yuma, Arizona; then you are instructed that plaintiff cannot in any event, recover herein, any greater sum for the animals that died in transit or before being removed from pens at destination, than the said sum of thirty dollars per head and the freight charges on same; and you are further instructed that plaintiff's claim for the animals alleged to have been injured in such transportation should be adjusted on a basis of said declared and agreed valuation of thirty dollars per head and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona; and that if said animals after delivery at destination to plaintiff were of the value of thirty dollars per head, and the freight charges on same from San Luis Obispo, California, to Phoenix, Arizona, plaintiff is not entitled to recover anything for said animals alleged to have been injured."

The court in its general charge instructed the jury as follows:

"The written contracts introduced in evidence limit the liability of the defendant company to thirty dollars for each animal injured or killed, and if you find for the plaintiff you should assess the damages at not exceeding thirty dollars per head for the cattle killed and not to exceed twenty dollars per head, the amount claimed in plaintiff's complaint, for the injury caused to each of said cattle by the defendant's negligence. The measure of damages in case of injury to the cattle under the contract is the amount of actual damages to each of said cattle so injured, resulting from the negligence of the defendant,

its agents or employes, in no case to exceed twenty dollars per head. The measure of damages as to those that were killed is not exceeding thirty dollars per head. A shipper will not be heard to claim or recover for damages or loss, however great, in excess of the amount claimed in the bill of lading as the agreed value; nor will the carrier be allowed to deny liability for actual damages up to that amount, except, as in this case, where a less amount is claimed in the complaint, which in this case is twenty dollars per head for each of the cattle injured and not killed. The carrier must respond for negligence up to that value but no further. If you come to the conclusion that the plaintiff is entitled to recover some damages, then, as I have heretofore stated, the measure of his damages for the eleven head of cattle that died, if you believe they died as a result of the defendant's negligence, would be not exceeding thirty dollars per head, and the measure of damages for the cattle that were injured by reason of the defendant's negligence would be the difference between the market value of the said cattle in their normal condition after making the trip from San Luis Obispo, California, to Phoenix, Arizona, and the condition in which they were actually delivered at Phoenix, but in no event can such injury or damages to each cow be placed at a figure in excess of twenty dollars; in other words, in arriving at the damages, if any, to be awarded to the plaintiff by reason of the cattle injured, if any, through the negligence of the defendant company, the measure of such damages will be the depreciation in the market value of the cattle by reason of such injury or injuries, such damages in no event, however, to exceed the sum of twenty dollars per head. If you believe that eighty-seven head of the plaintiff's cattle or any lesser number were damaged as set forth in plaintiff's complaint, and as a result of the negligent handling and transportation of the cattle by defendant, you may award

the plaintiff damages in a sum not exceeding twenty dollars per head, the amount alleged in plaintiff's complaint, and I further instruct you that in arriving at the damage suffered by the plaintiff you may consider the market value of cattle in their normal and healthful condition, of the grade and quality of plaintiff's cattle in the Salt River Valley at the time the injuries to his cattle were sustained, and you may then consider the price for which plaintiff sold his cattle in their injured condition, if you find from the evidence that the cattle *were* injured, and the difference in their market value in their normal condition and their value in their injured condition is a proper measure of plaintiff's damages, as I said before, not exceeding twenty dollars per head for the cattle injured." (Tr. pp. 172-173, 174).

The contracts contained, among other things, the following provision :

"Second party hereby further agrees that in case any loss or damage shall be sustained for which first party is liable, demand or claim for such loss or damage will be made by second party on the Freight Claim Agent of first party in writing, within ten days after unloading of the livestock; and that in the event of failure so to do, all claims for loss or damage in the premises are hereby expressly waived, released and made void, *and it is also expressly agreed by second party that the amount to be by him claimed for each animal as described herein, so lost or damaged, shall be adjusted on basis of value at time and place of shipment, not exceeding the declared value as hereinbefore set forth, and on which declared value the rate or rates of transportation hereinbefore named by first party are based; and in no event is there to be any recovery from first party or its lessors for any loss or damage to said livestock from whatsoever cause arising in excess of the declared value hereinbefore set forth.*" .. (Tr. pp. 23, 25, 27).

The contracts also contained the following:

“Declared value per head to be entered by shipper:

\$30.00” (Tr. pp. 23, 25, 27).

Defendant in error, Stewart, admitted making the contracts (Tr. p. 86) and the same were admitted in evidence. (Tr. p. 112).

It was stipulated upon the trial:

“That in July, 1913, there was more than one rate in effect on livestock, on the lines of the Southern Pacific Company and its connecting carriers, from San Luis Obispo, California, to Phoenix, Arizona. That there was in effect at such time, in accordance with the tariffs, a sliding scale of rates based upon the valuation per head of the livestock. That if the cattle involved in this suit had been shipped on a higher valuation a higher rate would have been assessed against such shipment, in accordance with such tariffs, and that the tariffs in effect provided for such different rates in accordance with the declared valuation as specified in the livestock shipping contracts. That such tariffs are and were on file with the Interstate Commerce Commission. (Tr. pp. 128, 129).

Plaintiff Stewart testified that he sold the eighty-seven head of cows for sixty-five dollars a head, after arrival at destination and after having received the alleged injuries, and that they would have been worth eighty-five dollars a head in their normal condition. (Tr. p. 85).

The court in its charge to the jury instructed them that the measure of damages for the injured cattle was the difference between the market value of the cattle in their normal condition after making the trip, and their value in the condition in which they were actually delivered, not to exceed twenty dollars per head. (Tr. p. 173). In other words that the measure of damages would be the depreciation in the market value of the cattle by reason of the injuries, not to exceed the sum of twenty dollars per head. (Tr. p. 173).

This, we contend was an erroneous interpretation or construction of the terms of the written contracts. Under this construction the jury could have found for plaintiff damages in the sum of thirty dollars per head for the eighty-seven head alleged to have been injured, and plaintiff would still have had the eighty-seven head worth fifty-five dollars a head. Or, if the plaintiff had sold eighty-seven head for fifty-five dollars a head, almost double the agreed and declared valuation of thirty dollars a head, the jury could have found in favor of plaintiff damages in the sum of thirty dollars a head.

It will be conceded that if all these cattle had been killed during the course of the shipment through the negligence of the carrier, that the extent of plaintiff's recovery would have been thirty dollars per head.

Adams Exp. Co. v. Croninger, 226 U. S. 499, 57 L. Ed. 314.

K. C. So. Ry. Co. v. Carl, 227 U. S. 639, 57 L. Ed. 683.

M. K. & T. Ry. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690.

Wells Fargo & Co. v. Nicman-Marcus Co., 227 U. S. 469, 57 L. Ed. 600.

Hart v. Penn. R. R. Co., 112 U. S. 331, 28 L. Ed. 717.

If these eighty-seven head had been damaged by the negligence of the carrier so that their actual value in such injured or damaged condition had been less than the agreed or declared valuation of thirty dollars per head—say, twenty dollars per head, then the recovery would have been limited to the difference between such actual value in such damaged condition and the agreed valuation, or ten dollars per head.

Jennings v. Smith, (C. C. A., Seventh Circuit) 106 Fed. 139: In this case the shipper, Jennings, brought suit against Smith, as receiver of the Atlantic & Pacific Ry. Co., to recover damages in the sum of three thousand dol-

lars for injuries to four race horses and for loss of some other personal property caused by a collision. The carrier, defended on the ground that the shipper had executed a livestock shipping contract similar to the contracts involved in the case at bar, whereby the shipper fixed the value of the horses at \$100.00 each. It was stipulated upon the trial in the Circuit Court that the total value of the four horses after the accident was \$90.00 (\$22.50 per head) and that the value of the other property which was destroyed was \$125.00. Proof was received on behalf of the plaintiff, under objection, that the actual value of the horses as delivered for carriage was \$2500 or \$3000. At the close of the testimony in the trial court, the court instructed the jury that the plaintiff was bound by the valuation of the horses stated in the contract and directed a verdict accordingly at the valuations otherwise stipulated, finding the defendant guilty and assessing the plaintiff's damages at \$435.00 (\$77.50 per head) for the horses in their injured condition, being the difference between the agreed valuation of \$100.00 per head and their actual value in such injured condition, \$22.50 per head, or \$310.00 for the four horses and \$125.00 for the other personal property destroyed, totalling \$435.00.

The judgment of the Circuit Court was affirmed by the Circuit Court of Appeals.

Under the rule announced by the decision in the case of *Jennings v. Smith*, supra, it would seem that in a case where the animals were worth more after arrival at destination and after having received the alleged injuries than the agreed or declared valuation, that the shipper would not be entitled to recover anything. If this is the correct rule, then the requested instruction referred to should have been given, and the instruction given by the court in its general charge on this subject was entirely erroneous.

However, we very earnestly insist that the correct rule to be applied in this case is that plaintiff was only entitled

to recover such a proportion of the actual loss as the declared or agreed value bore to the actual value.

This rule is supported by the greater weight of authority :

Hutchison on Carriers, 3rd Ed., Sec. 429:—

‘Measure of Recovery where loss is only partial.—

Where the parties have agreed that in the event of loss the liability of the carrier shall not exceed a certain sum at which it is stipulated the goods are valued, the question arises as to the extent of the carrier's liability where there has been only a partial loss of the goods. While it is held by some courts that the owner of the goods will be entitled to recover an amount equal to the actual loss sustained, providing such amount is not greater than the sum at which the goods are valued, the better rule would seem to be that he should be confined in his recovery to an amount equal to that proportion of the real loss that the declared value of the goods bears to their actual value as it existed before the loss occurred. Where the parties have stipulated that the carrier's liability in case of loss shall not exceed the sum at which the goods are valued, it is hardly reasonable to suppose that it was thereby intended that the carrier, in the event of only a partial loss, should be liable for an amount which might be equal to the sum fixed as the value of the goods, thus making it possible for the same amount to be recovered where the loss was only partial as would be recoverable where the loss was total. The owner, therefore, is held not to be estopped by the statement as to value from showing what the real value of the goods was for the purpose of arriving at the correct proportion.”

United States Express Co. v. Joyce, et al. (Ind.) 72 N. E. 865: This case involved claims for damages for injuries to two shipments of horses.

The first shipment consisted of 28 horses, actual value \$4760.00, declared value \$2100.00, actual loss \$2038.24.

The court held the shipper was only entitled to recover the sum of \$899.22.

The second shipment also consisted of 28 horses, actual value \$4760.00, declared value \$2100.00, actual loss \$1437.30. The court held the carrier only liable for damages in the sum of \$634.10.

We quote the following excerpts from the opinion of the Supreme Court of Indiana in this case:

"The questions presented by this appeal are: First: in an action brought by a shipper against a carrier for injury to goods shipped, is the former precluded from showing their real value when he has previously signed a contract for their transportation providing that the carrier shall be liable only for actual damages suffered, and in no event for a greater amount than the valuation of the property declared by the shipper and inserted in the contract? Second: If he is not so precluded, what is the measure of his damages for a partial loss of the goods where they have realized in their damaged condition a sum equal to or greater than their declared value?"

"It does not follow that the appellees may here recover to the full limit of the appellant's stipulated liability by showing that the difference between the true value of the animals if sound and the net proceeds from their sale is a sum equal to the largest amount for which the appellant agreed to be liable. The contract, it is true, expressly provided that the appellant would answer to the extent of actual damages, not to exceed \$2100 per car load; and in *Brown v. Cunard Steamship Co.*, 147 Mass. 58, 16 N. E. 717, *Starnes v. Louisville Co.*, 91 Tenn. 416, 19 S. E. 675, and *Nelson v. Great Northern Ry. Co.*, (Mont.) 72 Pac. 642, it was held that there might be a recovery, even in case of partial loss, up to the agreed limit of liability, irrespective of the value of the goods in their damaged condition or the amount ultimately realized from their sale; but this view does not commend itself to our minds. It is unreasonable to suppose that the carrier

agreed to pay the full measure of the damages recoverable in case of a total loss, when the loss was only partial.

"It was certainly contemplated by both parties that the amount of recovery should vary in case a horse was killed outright and in the event that only an eye was injured. When the parties agreed upon a valuation it may fairly be said that they each assumed a portion of the risk of injury in case of a total or partial loss. The carrier's liability was fixed, not arbitrarily by the appellant, but in a sum mutually agreed upon as the largest amount which he would be called upon to pay in any event. The liability of the shipper was equally well understood, though not expressed to be the difference, if any existed, between the value so declared by the shipper and the actual value of the goods. If a total loss occurred, both were to bear the burden in these respective amounts; the carrier responding to the full extent of this agreed liability, and the shipper losing the difference between the value he placed upon the goods and the value they really possessed. If the loss should be partial it is only just that the parties should bear it in proportion to their several express or implied liabilities. Hence the true method of ascertaining the damages would be to throw upon the carrier such a proportion of the real loss as the declared value bears to the actual value; that is to say, as the declared value of the injured property is to its actual value, so the amount of recoverable damages is to the amount of the real loss. Such is the method adopted in marine insurance to ascertain the proportions in which the insurer and the insured shall sustain a partial loss under a valued policy. The same rule though in different terms, is stated by the Supreme Court of the United States as follows in *London Assurance v. Companhia De Moagens Do Barreiro*, 167 U. S. 149, 17 Sup. Ct. 785, 42 L. Ed. 113: "The damaged goods, upon reaching their destination, must be at once sold for the best price that can be had. It is then to be determined what the goods must have been worth in the same market had they

been sound, and the difference between the sound value and the proceeds of the sale of the damaged article gives the ratio of deterioration, and the underwriter is to pay the ratio or percentage of loss on the policy value.' The above mode of determining the damages recoverable upon a partial loss appears to be recognized in *Goodman v. M. K. & T. Ry. Co.*, 71 Mo. App. 460, at page 463, where the court says: 'By the terms of the special contract shown in this case the plaintiff could not have recovered, if there had been a total loss of any article of furniture, more than \$5 per one hundred pounds. It is clear that for a partial loss of such article he should not recover on a basis of the actual value of the goods, but only the *proportionate value* (our italics) fixed by the contract, and so the trial court instructed the jury. But the jury seems not to have heeded such instruction. The evidence in plaintiff's behalf tended to show the actual loss or damage to the goods, without reference to the limit fixed by the contract, and the verdict shows that he was permitted to recover the actual amount of damages without reference to a proportionate reduction made necessary by the contract.' In *St. L. I. M. & S. Ry. Co. v. Lesser*, 46 Ark. 236, at page 243, the court in a case similar to the present, held that the following instruction should have been given: 'For a partial loss the measure of damages is, what proportion of \$100 (the declared value) said horse was lessened in value by reason of the injury.' The contract in that case provided for the payment of \$100 in case of total loss, and that 'in case of injury or partial loss the amount of damages claimed shall not exceed the same proportion.' Adopting this method of apportioning the loss, upon the first shipment of May 23, 1901, the actual value of the 28 horses was \$4760; their declared value \$2100. The net amount realized from the sale of said 28 horses was \$2721.76. The actual loss was therefore \$2038.24, and of this the appellant is answerable in the amount of \$899.22, interest to be added. Upon the second shipment of June 13, 1901, the actual value of the 28 horses shipped was \$4760; their declared

value \$2100. The net amount realized from the sale of said 28 horses was \$3322.70. The actual loss was therefore \$1437.30, of which amount the appellant is answerable in the sum of \$634.10, interest to be added—making, with the loss on the first shipment, a total of \$1533.32, with interest”

Frank v. Michigan Cent. R. Co., 154 N. Y. Supp. 701: This was a case involving a claim for damages to shipment of horses. The shipping contract provided that the valuation of the horses should be \$100.00 each and in no event should the carrier's liability exceed \$1200.00 upon any carload.

We quote as follows from the opinion of the court:

“The plaintiff contends that he is entitled to recover the entire loss, because it is less than the amount limited by the terms of the shipping contract. The defendant contends, first, that it is not liable for any of the loss, because the evidence shows that the horses were worth, after being injured, more than the valuation placed upon each of the horses; and, second, that in any event it is not liable for more than such proportion of the actual loss as the declared valuation bears to the actual value, namely, \$230.24. The actual loss sustained by the plaintiff was \$888.82, there being a loss upon each of the horses except two; but none of the horses was worth less than \$100 after the injury.

“I am of the opinion that the plaintiff is entitled to recover, but only the lesser amount. I shall not stop to analyze the various decisions which have been cited. It is not claimed that any are precisely in point, and I am not aware of any authoritative decision upon the exact question here involved. The reasoning of the cases, I think, sustains the conclusions here reached. As is well stated in *Hutchison on Carriers*: * * * *

“The valuation clause in question here is not an exemption of the defendant from liability for its own negligence. Such exemption is not permissible under the federal rule (*Adams Express Co. v. Croninger*, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A.

(N. S.) 257 by which this case must be determined, as the shipment was interstate. In the case last cited it was held that the limitation as to value has no tendency to exempt from liability for negligence; that it does not induce want of care, but exacts from the carrier the measure of care due to the value agreed on. The decision of that case was placed upon the distinct ground that such a contract is valid when fairly made, as a basis for a freight rate, and a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuations. The horses shipped were invoiced at about half their value. If there had been a total loss, the carrier would have been liable for but half their actual value. I think the rule holds good where there is a partial loss."

Plaintiff claimed the full amount of the actual damages, \$882.82, but the court rendered judgment for the sum of \$230.24, being the proportion of such actual damages as the declared value bore to the actual value.

In the case at bar, as to the eighty-seven head alleged to have been injured, the actual value (according to plaintiff's testimony) was \$85.00 per head; declared value \$30.00 per head, and the actual damage \$20.00 per head.

Applying the above-mentioned rule in arriving at the amount recoverable we find that the sum of \$7.05 bears the same proportion to \$20.00 (the actual damage to each head as alleged) as \$30.00, the declared valuation bears to the actual value \$85.00.

Therefore plaintiff was only entitled in any event to recover the sum of \$7.05 per head for the eighty-seven head alleged to have been injured instead of \$20.00 per head, and for this reason the trial court erred in refusing to give the instruction requested and also erred in charging the jury that plaintiff could recover the full amount of the alleged damages, \$20.00 per head.

Under the instructions as given by the court the jury found the full amount of damages claimed to the eighty-seven head alleged to have been injured, \$20.00 per head, \$1740.00, also \$30.00 per head for the eleven dead ones, \$330.00, and \$20.00 expenses, totaling \$2,090.00.

It is respectfully submitted that the judgment should be reversed with directions to enter judgment for defendant.

J. C. FOREST,
FRANCIS M. HARTMAN,
Attorneys for Plaintiff in Error.

No. 2745

IN THE

**United States Circuit Court
of Appeals**

FOR THE NINTH CIRCUIT

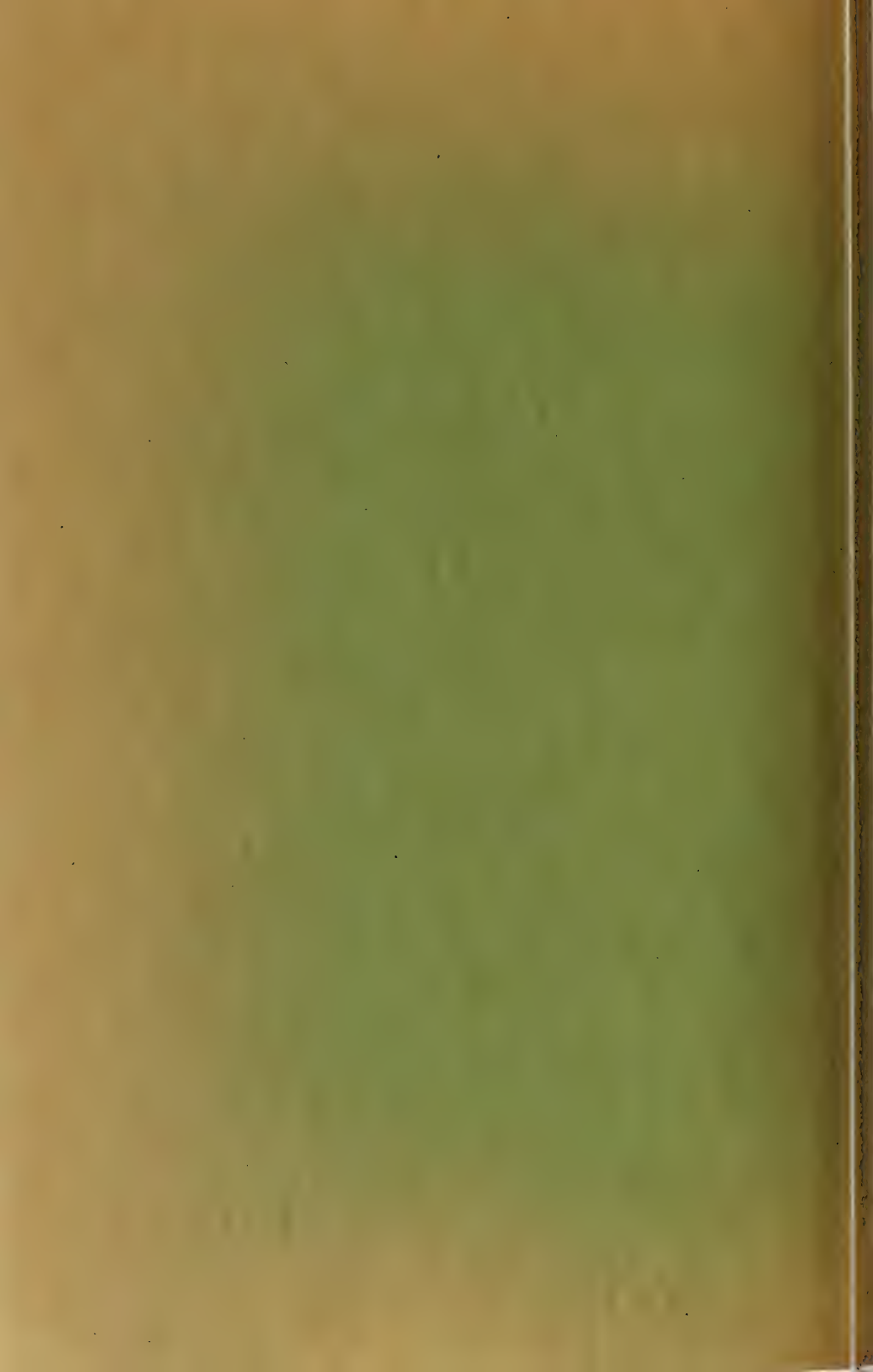
SOUTHERN PACIFIC COMPANY,
a Corporation,

Plaintiff in Error,
vs.

FRANK R. STEWART,
Defendant in Error.

REPLY BRIEF OF DEFENDANT IN ERROR

HAYES & LANEX,
Attorneys for Defendant
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REPLY BRIEF OF DEFENDANT IN ERROR

In our reply to the brief of plaintiff in error filed herein, we shall for brevity pass over plaintiff in error's statement of the case and its assignments of errors, taking up those assignments in the order and in the form in which they appear in the arguments, beginning on Page 28 of the brief, and should we have occasion to call the Court's attention to additions or corrections of any portion of the statement or of the assignments, we shall do so in the course of our reply to the arguments and under each separately enumerated argument in the order in which it is stated in plaintiff's brief.

REPLY TO ARGUMENT NUMBERED FIRST,
EMBRACING FIRST, SECOND, THIRD AND
FOURTH ASSIGNMENTS OF ERROR.

These assignments relate to questions propounded by plaintiff in error and objected to by defendant in error, through which it sought to establish a custom of the plaintiff in error, and perhaps of other carriers in the southwest, of maintaining stock pens and corrals upon its line of railroad, similar to the feeding and rest pens complained of by the defendant in error. The plaintiff in error doubtless assumes that if it were permitted to show that the feeding and rest pens at Yuma, Arizona, were maintained in as good condition as were such pens and corrals at El Paso, Texas, Tucson, Bowie and Phoenix, Arizona, Indio, California, and other places in the southwest, this fact would present proper and material evidence for the jury's consideration in arriving at their determination as to whether the plaintiff in error had been negligent in maintaining improperly equipped pens at Yuma, Arizona.

Before such questions as embodied in these assignments of error could be relevant or material testimony, it would first have to be established that the pens at the places suggested for comparison were properly equipped. The questions as propounded have the further vice of implying or leaving the inference with the jury, without proof, that such places offered for comparison were properly equipped and maintained. The question suggested in the third assignment of error is further objectionable in that the question itself assumes, without proof, that the places

therein referred to are similarly situated and have the same climatic conditions as Yuma, Arizona. If the plaintiff in error was negligent in maintaining its pens at Yuma in the condition complained of, that negligence could not be condoned or excused by establishing a negligent custom. A negligent custom cannot excuse or condone a particular negligent act.

The following cases appear to be in point, and seem to us to establish conclusively that the court acted properly in sustaining the objections of defendant in error to the questions assigned as error by the plaintiff:

Grand Trunk R. Co. vs. Richardson, 91 U. S. 454, 469.

Quoting from the decision:

"The second assignment of error is that the Court excluded testimony offered by the defendant to show that the usual practice of railroad companies in that section of the country was not to employ watchmen for bridges like the one destroyed. It is impossible for us to see any reason why such evidence should have been admitted. The issue to be determined was, whether the defendant had been guilty of negligence; that is whether it had failed to exercise that caution and diligence which the circumstances demanded and which prudent men ordinarily exercise. Hence the standard by which its conduct was to be measured was not the conduct of other railroad companies in the vicinity; certainly not their usual conduct. * * * The usual practice of other companies in that section of the country sheds no light upon the duty of the defendant when running locomotives over long wooden

bridges in near proximity to frame buildings when danger was more than commonly imminent."

In *Hibbler vs. McCartney*, 31 Ala. 501, it was expressly held that usage and custom will not excuse a carrier for neglect of any duty which it owes to transport goods safely.

Champagne vs. Patterson, 50 Ill. 61 was an action against a city for an injury to a pedestrian caused by an opening in the sidewalk. In this case it was held that the existence of similar apertures in various other parts of the city for a long period did not show that the alleged defect was not one for which the city was liable if any damage was occasioned thereby.

Hinkley vs. Barnstable, 109 Mass. 126, was an action against a town for an injury received by reason of an uncovered drain. The defendant sought to show absence of negligence on its part by offering evidence that it was usual for towns in that part of the country to leave drains uncovered. The evidence so offered was excluded by the Court.

In *Bailey vs. New Haven etc. R. R. Co.*, 107 Mass. 496, the defendant was charged with negligence in failing to maintain a flagman at a crossing, held that the custom of other railroads in maintaining flagmen at crossings was inadmissible.

REPLY TO ARGUMENT NUMBERED SECOND, EMBRACING ASSIGNMENT OF ERROR NUMBERED FIVE.

This argument is upon plaintiff in error's motion for a directed verdict, and is based primarily upon the Act

referred to therein, being the Act approved June 29, 1906, 34 Stat. L. 607.

Counsel at the outset appear to have overlooked the gist of defendant in error's cause of action. Our action is not based upon the delayed transportation of the stock, but upon the duty of the plaintiff in error to transport the cattle safely and to deliver them in good condition at destination, and their negligent performance of this duty in unloading the cattle at 9:00 o'clock in the morning of the 4th day of July, at the station of Yuma, Arizona, into improperly equipped feed and rest pens. See defendant in error's complaint (Trans. pp. 1-6 inclusive).

Upon reading the defendant in error's pleadings, it will be readily apparent that the gist of his cause of action is not the delay in transportation caused by compliance with that Act, but the negligent compliance with that Act. The compliance with the Act in such manner as to directly inflict cruelty upon the animals in question, rather than to prevent cruelty to them, which is one of the main purposes of the Act. The Act provides for the unloading of animals "in a humane manner into properly equipped pens for rest, water and feeding."

The Act has a two fold purpose, first to insure humane treatment of animals in transit, and second, to subserve the interests of the owner or shipper as far as possible in consonance with such treatment.

U. S. vs. Ore. Ry. etc. Co., 163 Fed. 640.

U. S. vs. Atchison etc. Ry. Co. 166 Fed. 160, 163.

U. S. vs. So. Pac. Co. 157 Fed. 459.

The Plaintiff in error so handled this shipment at Yuma as to neither insure humane treatment of the animals, nor subserve the interests of the shipper, but in direct and willful violation of the expressed wishes of the shipper and his associates, three experienced cattlemen, and despite their repeated warnings that to do the thing complained of would result in the serious injury or death of the cattle, thereby violating both the spirit and intent of the Act. (Trans. pp. 83, 90, 98 and 99).

The Court properly refused plaintiff in error's motion for a directed verdict for the further reasons:

(1) That there was testimony introduced on behalf of the defendant in error, to the effect that the shipment was loaded at Los Angeles at 4:40 P. M. on the 3rd, and arrived at Yuma at 9:00 A. M. on the 4th, after having been confined for a period of sixteen hours and twenty minutes. This testimony having been rebutted by plaintiff in error. The actual period of confinement of the cattle at the time of their arrival at Yuma was a material issue of fact for the jury.

(2) That the cattle were shipped in open, properly ventilated cars which would protect them from the rays of the sun and at the same time afford free passage of air through the cars, and that they arrived at Yuma in good condition, "all standing quietly and nice and perfectly cool." "Cattle never shipped finer." (Trans. pp. 90, 98, 100). This testimony is undisputed.

(3) That upon arrival at Yuma, the weather was very hot, and the stock pens consisted of sand dunes enclosed by fence, with no shade of any character.

(Trans. pp. 83, 90 and 100). This testimony is undisputed.

(4) That upon arrival of the shipment at Yuma, the plaintiff in error's attention was called to the then good condition of the shipment, that arrangements had been made for forwarding the shipment through to Phoenix. That to unload the cattle at Yuma under the conditions then existing, would result in the death of "every head of cattle." (Trans. pp. 83, 90 and 99). This testimony is undisputed.

(5) That the defendant in error delivered to the plaintiff in error at Yuma, a telegram showing arrangements made at Phoenix for the through transportation of his shipment; that in addition thereto he offered to sign and deliver to plaintiff in error, a release of all liability for forwarding the shipment. (Trans. pp 89, 90, 99, 105 and 106.) This testimony is undisputed.

(6) That the plaintiff in error had feed and rest pens at Gila, at which point the cattle could probably have been unloaded within the twenty-eight hour period, as the train upon which the shipment was handled, did actually arrived at Gila within the twenty-eight hour period (Trans. p. 119). That the cattle without doubt could have been moved to Gila and in all probability to their destination at Phoenix, Arizona, within the thirty-six hour period under the special telegraphic arrangement had with the Arizona Eastern at Phoenix.

We believe the Court erred in failing to instruct the jury that the conduct of the defendant in error in delivering the telegram to the agent at Yuma and in

further offering to sign a release in writing to the plaintiff in error, amounted to the tender to it of a release in writing in accordance with the provisions of the so-called Twenty-eight Hour Act (Trans. pp. 89, 90, 99, 104, 105 and 106), and although the defendant in error duly excepted to the action of the Court in failing to so instruct the jury, this fact is not urged at this time except as an answer to plaintiff in error's assignments and to call the Court's attention to the facts as developed by the testimony.

(7). That the damage sustained by defendant in error was the direct and proximate result of the negligent acts of the plaintiff in error as hereinabove set forth. That defendant in error's damage was not due to a climatic condition over which the plaintiff in error had no control is conclusively shown we believe, by the undisputed testimony that the cattle arrived at Yuma in good condition, and it is to be presumed that had the shipment moved forward in keeping with the shipper's instructions, the protection accorded the cattle by the cars together with the circulation of air and breeze created by the motion of the train, would have fully protected the cattle from injury. Had the cattle succumbed to heat while in transit in the plaintiff in error's cars and without any negligence upon the part of the plaintiff in error, this would have been a loss due to natural causes, but where the loss was occasioned as in this case through an intervening negligent act on the part of the plaintiff in error as the proximate cause of the injury and damage, it cannot be successfully maintained that the damage was due to causes beyond the control of the plaintiff in error. An examination of the cases cited by plaintiff in error

to the effect that the loss was due to climatic conditions, will disclose that in no single instance was there an intervening negligent act contributing to or proximately causing the injury and damage.

REPLY TO ARGUMENT NUMBERED THIRD, EMBRACING THE SIXTH ASSIGNMENT OF ERROR.

We believe the requested instruction was properly refused for the reason that the evidence discloses the tender of the thirty-six hour release; that the cattle could have been forwarded to their destination at Phoenix within the thirtysix hour period; and that in any event, the cattle could have been forwarded to Gila within the twenty-eight hour period, at which station the cattle could have been unloaded in the evening and in a more humane manner than under the conditions then existing at the station of Yuma. The Court doubtless based his refusal to give this instruction upon the fact that there was testimony in the record that the shipment could have been forwarded to Gila within the twenty-eight hour period, and that in view of the refusal of the defendant in error to permit the unloading at Yuma and the warnings there given, it was the duty of the plaintiff in error in any event to have moved the shipment to Gila.

REPLY TO ARGUMENT NUMBERED FOURTH, EMBRACING THE SEVENTH AND EIGHTH ASSIGNMENTS OF ERROR.

The Court we believe very properly denied these requested instructions. The instructions embraced contested questions of fact which it was the province

of the jury to determine and which could not properly be assumed in the instruction.

To have granted the instructions would have been an express recognition of the right of the plaintiff in error to control the shipment and would have been tantamount to saying to the jury that the shipper himself had no voice or discretion in the handling of his shipment. The instructions place the entire discretion in the matter, with the plaintiff in error and ignore the protests, warnings and demands of the shipper.

The instructions are further erroneous in ignoring the fact in evidence that the cattle could have been transported to the station of Gila, if not in fact to the city of Phoenix under the special arrangement made by the shipper, in compliance with the tendered release in writing to the plaintiff in error. The carrier is bound to subserve the interests and wishes of a shipper with respect to the handling of his shipment so far as possible in consonance with proper treatment of the stock.

REPLY TO ARGUMENT NUMBERED FIFTH,
EMBRACING THE NINTH, TWELFTH AND
TWENTY - FOURTH ASSIGNMENTS OF
ERROR.

The ninth and twelfth assignments complained of are substantially embodied in the instruction given by the Court and excepted to as the Twenty-fourth assignment of error. To place this instruction before the Court conveniently, we here quote it in full:

“The defendant company also pleads that not-

withstanding the fact that it may have been guilty of negligence in the particulars set out in the complaint, nevertheless the plaintiff in this case cannot recover, because the contract heretofore referred to (and which was signed by the plaintiff, and by Mr. Ford and Mr. Whitten, on behalf of the plaintiff, who were thereunto duly authorized) provides that the "second party hereby further agrees that in case of any loss or damage shall have been sustained for which first party is liable, demand or claim for such loss or damage will be made by the second party on the Freight Claim Agent of the first party in writing within ten days after unloading the livestock; and that in event of failure so to do, all claims for loss or damages in the premises are hereby expressly waived, released and made void." Defendant alleges that no claim for loss or injury to said cattle was presented to it, or any of its agents or employes within the ten-day period. If you find this to be true, then, of course, the plaintiff cannot recover unless you further find that the defendant waived this provision of the contract, or that the plaintiff was relieved from a compliance therewith as is hereinafter stated. The plaintiff in reply to this contention, that the claim should have been presented in writing within ten days after the unloading of the livestock, alleges that he was relieved from compliance with the above quoted provision in that "on the 4th day of July, 1913, and at all times subsequent to the arrival of said cattle at.....Yuma—(I say subsequent to the arrival of said cattle at Yuma)—the defendant had full knowledge and notice of the injuries and damages to plaintiff's cattle as set forth in its said complaint, that said cattle were unloaded by the defendant into its stock pens at the station of Yuma between the

hours of 9 and 10 o'clock A. M. on the 4th day of July, 1913, and between said dates and the hour of 7:30 P. M. of said day, and prior to the re-loading of the cattle into defendant's cars, five of the said cows died . . . That upon reloading the said cattle it became necessary to provide, and the defendant did provide, an additional car in which to ship thirteen of the crippled and sick cattle of the plaintiff to their destination at Phoenix; that at various points between said station of Yuma and the city of Phoenix the train officials in charge of said shipment received telegraphic inquiries from other officials of the defendant inquiring as to the condition and welfare of said shipment; that upon the arrival of said shipment at Phoenix, Arizona, one of said crippled animals remained in defendant's car for a period of more than a week; and that immediately after the unloading of said shipment at Phoenix, Arizona, and almost daily from said date until the 21st day of October, 1913, the plaintiff and the agents of the Arizona Eastern Railroad Company and of this defendant were in communication relative to the damages sustained by the plaintiff; that the nature and extent of the injuries to the plaintiff's cows which arrived at the destination alive, were such as to render it impossible for the plaintiff, or any other person else in the exercise of due care and diligence to determine the amount and extent of damage sustained by the plaintiff within the said ten-day period; that a number of said cattle died many days after their arrival at Phoenix, Arizona, as the result of such injuries . . . that the defendant had on many occasions prior to the 21st day of October, 1913, recognized plaintiff's right to recover in some amount on account of his damages, sustained as set forth in his said

complaint, and has on many occasions attempted to settle and compromise said claim with the plaintiff." I repeat those allegations of the reply in order to show what the plaintiff claims as his reason or excuse for not having presented his claim in writing to the defendant company or its agents within ten days from the date of such loss or injury, as is provided by the contracts.

"I charge you as a matter of law that if you believe the defendant or its agents or employes did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in the plaintiff's complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the said provisions of said contracts."

The facts as pleaded by the defendant in error and embodied in the foregoing instruction were completely sustained by proof introduced by defendant in error and undisputed and uncontradicted by plaintiff in error. (Trans. pp. 83, 84, 85 and 86).

We believe this instruction states correctly and completely, the law relative to the giving of notice in writing of claim for damages and relative to waiver of such notice, and cite the following cases in support of the instruction:

Cockrill vs. M. K. & T. Ry. 136 Pac. 322.

Wabash Ry. Co. vs. Thomas, L. R. A. (N. S.) 1041.

Adams vs. Colo. & So. Ry. Co. 113 Pac. 1010.

Pierson et. al. vs. No. Pac. Ry. Co. 112 Pac. 509.

Chicago & Rock Island Ry. Co. vs. Spears, 122 Pac. 228.

Mo. K. & T. Ry. Co. vs. Frogley, 89 Pac. 903.

REPLY TO ARGUMENT NUMBERED SIXTH,
EMBRACING THE FIFTEENTH ASSIGN-
MENT OF ERROR.

This instruction was properly refused by the Court for the reason that it sought to confine the issues made by defendant in error in his complaint and reply, within a narrower scope than made by his pleadings and proof, and is not sufficiently specific to embrace any particular matter of defense pleaded by plaintiff in error. The following instruction given by the Court sufficiently meets the arguments of counsel in support of this assignment and completely embraces and covers the several matters of defense urged in their argument:

“In order to enable you to determine whether or not the negligence of the defendant above referred to caused the death of or injury to any of the cows, you may also take into consideration all evidence with reference to the previous history and condition of the said cows, the climatic conditions where they were raised and shipped from, their physical condition at the time of shipment, whether or not they had been well cared for and fed in Los Angeles, California, previous to such shipment, the condition of the weather with respect to temperature at the time they were shipped from Los Angeles and at the time they arrived at Yuma, the condition of the cattle when they arrived at Yuma before they were there unloaded, their ages and weights, the condition of their health and strength, and all other facts and

circumstances of the trip surrounding and in any way affecting the class and condition of said cattle." (Trans. 165).

In view of this instruction having been given, the giving of plaintiff in error's requested instruction, had it been correctly stated, would have been more repetition, and therefore unnecessary.

REPLY TO ARGUMENT NUMBERED SEVENTH, EMBRACING THE SEVENTEENTH AND NINETEENTH ASSIGNMENTS OF ERROR.

These instructions were properly refused for the reasons set forth in the concluding portion of our reply to plaintiff in error's argument numbered Second, and for the further reason that there is evidence on the part of the defendant in error and uncontradicted by the plaintiff in error tending to establish the fact that the negligence of the plaintiff in error in unloading the shipment at Yuma under the conditions then prevailing at Yuma and into the improperly equipped feeding and rest pens then being maintained at that point, was the direct and proximate cause of the injury to defendant in error's cattle and his resulting damage.

The instruction requested under assignment numbered Seventeen was further objectionable in that there was no testimony whatsoever introduced by the plaintiff in error showing or tending to show that any of the loss or damage to the shipment was due to climatic conditions solely and independently of any act of negligence on the part of the plaintiff in error.

The instruction refused and assigned as error num-

bered Nineteen was also further objectionable in that it did not negative negligence on the part of the plaintiff in error as a contributing or proximate cause of defendant in error's damage and loss .

REPLY TO ARGUMENT NUMBERED EIGHTH EMBRACING THE EIGHTEENTH ASSIGN- MENT OF ERROR.

It is true that in the contract of shipment, the defendant agreed to unload and reload at resting places and to feed and water at his own expense and to accompany and attend his livestock enroute and at its destination. The contract further provided:

“And in case first party should through his employes furnish aid to assist in loading, caring for enroute, unloading or transferring said livestock said employes of first party so assisting or performing services shall be subject to the orders and deemed the employes of second party while so engaged, and not in any sense the agents of first party; and when livestock is in corrals at shipping point, resting place or destination, it shall be at owner's risk of loss or damage through breaking out of corrals or in loading and unloading.”

The Act of June 29, 1906, commonly known as the Twenty-eight Hour Act, places upon the carrier the duty of feeding, watering and caring for the shipment in the event of the default of the shipper in so doing.

The provisions of the shipping contract above quoted, assume that the carrier has in the first in-

stance provided properly equipped feed and rest pens into which the stock may be unloaded, and further that the shipper's reasonable requests relative to a shipment have been complied with, and that a necessary and proper case for unloading exists. The facts developed in this case show that the carrier acted arbitrarily, willfully and without authority from the shipper, in fact contrary to the repeated warnings and vigorous protests of the shipper; that upon the refusal of the shipper to unload his stock under the conditions testified to, the carrier assumed the responsibility of unloading and caring for them and of course the risk attendant upon and following as the natural result of its conduct in so doing.

The damage to defendant in error's shipment was not the direct or proximate result of the failure to feed and water the shipment, but of the failure of the carrier to provide suitably equipped pens for receiving the shipment, a condition over which the shipper had no control, and for which he could not be compelled to assume the responsibility. The act was committed by the carrier after repeated warnings by three experienced cattlemen, Stewart, Whitton and Ford, and having assumed to act in defiance of the shipper and his caretakers, the carrier cannot now evade the responsibility of his negligent acts by charging the shipper with contributory negligence in failing to procure the Yuma Fire Department to shower his cattle and wet down the carrier's pens during the ten hour period they remained at Yuma.

The case of *Gilliland et. al. vs. So. Ry. Co.* 67 S. E. 20, is the only case we have been able to find even approximately in point upon the question raised by

counsel in this assignment. This was a case in which the carrier unloaded the stock against the protests of the shipper and in the absence of the shipper, and thereafter attempted to relieve itself from liability by charging the shipper with the duty of unloading, re-loading and caring for his shipment as in this case. The Court held as follows:

“It was the duty of the shipper to load and unload and to supply food, water and attention, but it was the duty of the railroad company to supply a proper place to unload the stock and to have proper protection for them and if the horses and mules were injured because the carrier neglected to have a proper place and proper protection for the unloading, it would be liable for the resulting injury.”

REPLY TO ARGUMENT NUMBERED NINTH, EMBRACING THE TWENTY-THIRD AS- SIGNMENT OF ERROR.

We believe no reply to plaintiff in error's argument in support of this assignment is necessary further than to here quote for the convenience and instruction of the Court, portions of the trial court's instructions immediately preceding and immediately following the instruction complained of, to enable the Court to see that the instruction was a complete and entirely proper and fair one:

“I further charge you that it was the duty of the defendant company to unload the cattle for feed, rest and water, into pens properly equipped therefor. The statutes of the United States make it the duty of the railroad company to do that. You have heard all the evidence in the case, and it is for you and you alone to determine

whether or not the corrals and pens provided by the defendant company at Yuma were such as the law requires railroads to furnish for the proper unloading, feeding and resting and watering of cattle. I say for the proper unloading, feeding, and resting and watering of the cattle. In passing upon this question, you may take into consideration the season when the cattle arrived at Yuma, the climatic conditions thereat at the time, and all of the other facts and circumstances in the case. In this same connection, you may also determine whether or not there was on said 4th day of July, 1913, any other place or station on defendant's line which the train carrying these cattle, and operating on its usual schedule could have reached within the twenty-eight hour period, at which the cattle could have been unloaded, fed, watered, and rested under conditions more favorable than existed at said town of Yuma on July 4, 1913. If you find from the evidence that the defendant had other corrals on its line (147-71) of road and in the direction in which plaintiff's shipment was moving, into which plaintiff's cattle could have been unloaded within the twenty-eight hour period and in a more humane manner than by unloading at Yuma, under the circumstances developed in this case, then it was the defendant's positive duty to transport said cattle to such station for unloading.

"If you find that the corrals or stock pens of the defendant company at Yuma were 'properly equipped for the unloading of cattle for feed, water and rest,' and that said company used due diligence in the unloading, handling and care of the stock at Yuma, then the defendant would not be liable to the plaintiff for any loss or injury to any of the said cattle."

REPLY TO ARGUMENT NUMBERED TENTH, EMBRACING THE FOURTEENTH AND TWENTY-FIFTH ASSIGNMENTS OF ERROR

These assignments and the arguments made by counsel in support thereof, to our minds present the most difficult questions for the Court's analysis and determination.

FOURTEENTH ASSIGNMENT

We will first consider in this reply the fourteenth assignment of error, based upon the Court's refusal to give the special instruction therein requested by the plaintiff in error. The instruction asks that:

"The amount to be claimed by plaintiff for each of said animals so lost or damaged should be adjusted on the basis of the value of such animals at the time and place of shipment, to-wit: On July 1, 1913, at San Luis Obispo, California, not exceeding the declared and agreed value thereof, to-wit: the sum of \$30.00 per head."

and further asks that the value of injured cattle

"be adjusted on a basis of said declared and agreed valuation of \$30.00 per head and the freight charges on the same from San Luis Obispo, California, to Phoenix, Arizona, and that if said animals after delivery at said destination to plaintiff were of the value of \$30.00 per head, and the freight charges on the same from San Luis Obispo, California, to Phoenix, Arizona, plaintiff is not entitled to recover anything for said animals alleged to have been injured."

The first portion above quoted of the requested instruction would foreclose the defendant in error of the

right to establish the actual value of his stock shipped, in their normal condition, and would further render it futile and vain for defendant in error to show the actual value of any of his cattle in their damaged condition, provided that their actual value in such condition equalled or exceeded the sum of \$30.00 per head. It asks that the released valuation as named in the shipping contract, be accepted by the jury as the actual value of the cattle in question, notwithstanding the fact that the contract itself provides that the company shall be liable for loss or **damage** up to the declared value of \$30.00.

The latter quoted portion of the instruction would grant to the carrier entire immunity for any loss, damage or injury arising through its own negligence, no matter how valuable the animal injured or to what extent damaged, provided the animal still had an actual value of \$30.00 after injury. The Supreme Court of Indiana very neatly and tersely answers this portion of the requested instruction in the following language:

“The law will not allow a common carrier to contract to be safely negligent.” *Rosenfeld vs. R. R.* 2 N. E. 364.

What we believe to be a proper construction of the clause of the shipping contract upon which these errors are assigned, is well and logically expressed by the Supreme Court of Tennessee as follows:

“The question is not, what did each animal bring in the market in its injured condition, but rather to what extent and in what amount not above \$100.00 (the declared value) was it damaged through the fault of the defendant? Not

what value was left in the animal, but what elements of value were wrongfully taken away?"

Starns vs. Louisville & N. R. Co., 19 S. W. 675.

The Supreme Court of Massachusetts in *Brown vs. Cunard Steamship Co.*, 16 N. E. 717, 719, uses the following language in construing a similar clause in a shipping contract:

"In the former case we do not suppose that it would be contended that if a package brought 100 pounds no damage could be recovered, yet unless the argument is carried to that extent we see no reason why, in the latter alternative, the ship owner should escape if the goods bring their invoice price. Looking at the words of the latter branch of the sentence alone, it will be seen that they refer 'to the event of damage for which the shipper is responsible', and therefore in terms presuppose that something is to be recovered in the case for which they provide. The follownig words 'the liability shall not exceed' etc., are apt words to express the outside limit of the sum to be recovered, but both the particular words and the whole structure of the sentence **are most inapt to express a stipulation that if the goods are still equal to the invoice value, there shall be no recovery at all.**" (*Italics are ours.*)

TWENTY-FIFTH ASSIGNMENT

We believe the instruction given by the Court as to the measure of damages for loss and injury to the shipment very clearly and completely states the well supported, logical and equitable rule as between carrier and shipper for the measure of damages under facts similar to those existing in this case.

It is a well established rule that the place of designa-

tion is to be taken as the basis for determining the damage and that the measure of damage is the difference between what the goods were worth at the place of destination, as injured, and what they would have been worth if delivered in good order, not to exceed, of course, the limit of recovery placed in the shipping contract itself.

Estill vs. N. Y. etc. R. Co., 41 Fed. 849

Western Mfg. Co. vs. The Guiding Star, 37 Fed. 641.

The Surrey, 30 Fed. 223.

Hudson vs. Northern Pac. R. Co. 60 N. W. 608.

Gulf etc. R. Co. vs. Butler 63 S. W. 650.

The case of Hart vs. Penn. R. R. Co. 112 U. S. 331 cited by plaintiff in error in support of its views, we believe well sustains the instruction given by the Court and assigned as error numbered Twenty-five. The contract of shipment in this case contained a clause to the effect that the carrier assumed a liability of not to exceed \$200.00 per head for each horse or mule shipped. The shipment consisted of five head. One of the horses was killed and others were injured. A recovery in the amount of \$1,200.00 for the damage was had in the trial court. The trial court charged the jury as follows:

"It is competent for a shipper by entering into a written contract to stipulate the value of his property and to limit the amount of his recovery in case it is lost. This is a plain agreement that the recovery cannot exceed the sum of \$200.00 each for horses."

This charge of the trial court and the recovery in

the trial court was sustained by the Supreme Court of the United States. The following language from the Supreme Court's opinion is in point:

"The limitation as to value has no tendency to exempt from liability for negligence . . . The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. . . . The carrier must respond for negligence up to that amount."

The Supreme Court of Tennessee in *Starns vs. Louisville & N. R. Co.*, *supra*, following the Hart case, expresses the rule as follows:

"The court at this point should have told the jury that the stipulation limited the liability of the defendant to \$100.00 for each animal injured or killed, and that they should assess the damages according to the real injury caused by the carrier's negligence in no instance exceeding \$100.00 per head. The question is not what did each animal bring in the market in its injured condition, but rather to what extent and in what amount not above \$100.00 was it damaged through the fault of the defendant? Not what value is left in the animal, but what elements of value were wrongfully taken away? To illustrate: a horse shipped under such a contract loses one eye through the negligence of the carrier, and the owner sues for damages. The question in such a case is how much has the animal been damaged by the loss of the eye, and not will he sell for as much as \$100.00 with but one eye. The agreement is that the carrier shall not be liable for more than \$100.00 in case of damages, not that no liability shall attach if the horse though injured, should sell for as much as that sum. The true measure of liability under the contract is the

amount of actual damages resulting from the negligence of the carrier in no case to exceed the sum stipulated. This is the most natural and reasonable construction of the contract. It is fair and just to both parties."

The following cases are also closely in point and completely sustain the above instruction given by the trial court in this case:

Brown vs. Cunard S. S. Co. *supra*.

Nelson vs. Great Northern Ry. Co. 72 Pac. 642, 649.

The general rule on the measure of damages under facts similar to this case is stated in Am. & Eng. Enc. of Law, Vol. 5, p 335, 2nd Ed. as follows:

"Where the stipulation limits the liability of the carrier in any event to a sum named in case of loss of the property shipped and no loss occurs, but the property is injured the shipper is entitled to recover damages for the injury up to the amount named, although the injured property may still be valuable. The effect of the stipulation is not to fix a limit in case of loss and a proportionate limit in case of injury, but to fix an amount which shall be the limit of recovery whether for loss or injury."

RULE URGED BY PLAINTIFF IN ERROR CONSIDERED.

The rule insisted upon by counsel for plaintiff in error as the correct rule, appears to have found support in but two States, viz: Indiana and New York, and in each of the cases cited by counsel, the Supreme Courts of those States were divided in their opinions, two judges dissenting from the majority opinion in

the Indiana case, and one dissenting in the New York case, and announcing the rule as given by the trial court in this cause as the true and proper rule.

Let us now analyze and test the rule and formula as announced in these cases, viz:

“As the declared value of the injured property is to its actual value, so the amount of recoverable damages is to the amount of the real loss.”

and see to what conclusions it will carry us.

The testimony discloses the sound value of defendant in error's cattle to be from \$85.00 to \$100.00 per head. (Trans. 85, 94, 95, 101.) However, the amount of damage alleged in the complaint is \$20.00 per head for injured cattle. The testimony further discloses that the injured cattle had a market value of \$65.00 per head. Taking the minimum estimate of the value of the cattle in their normal condition and applying the formula, we have $30:85::x:20$. Solving the proportion we find the value of x to be 7.05.

Now let us assume the largest value testified to, then we have the proportion $30:100::x:30$. Solving the proportion we find the value of x to be 9.

Now let us assume the actual value of the cattle in their normal condition to be \$40.00 per head and their actual value in their injured condition to be \$10.00 per head, then we have the following proportion $30:40::x:30$. Solving the proportion we find the value of x to be \$22.50.

Let us suppose now that the actual value of the shipment is \$30.00 per head, being the same as their declared value, and let us suppose that we were

obliged to sell the injured animals at \$10.00 per head, and that we are suing for a \$20.00 damage as in the present case, our formula would be $30:30::x:20$. Solving the proportion we find the value of x to be 20.

We now ask the question does the formula as announced by the Supreme Courts of Indiana and New York afford an equitable or logical rule of interpretation of the contract in question and a proper rule for measurement of damages? Under this formula the defendant in error having shipped animals worth from \$85.00 to \$100.00 per head, and having suffered actual loss and damage through the negligent acts of the Company of from \$20.00 to 35.00 per head, would be enabled to recover from \$7.05 per head to \$9.00 per head. Had he shipped animals actually worth but \$30.00 per head and had he suffered an actual loss and damage to his shipment of \$20.00 per head, his recovery would be 100% of his actual loss and damage or \$20.00 per head.

Now let us suppose the defendant in error's cattle were actually worth \$150.00 per head in their sound condition, and \$50.00 per head in their injured condition, and let us keep in mind the construction placed upon the limited livestock shipping contract by the United States Supreme Court in a number of decisions, some of which have been quoted by plaintiff in error, which limits his maximum recovery for loss or damage to \$30.00 per head. Under this rule of construction, this is the largest amount he could sue for, no matter what his actual damage might be. Reducing this set of facts to the mathematical formula, we have $30:150::x:30$. Solving the proportion we find the value

of x to be 6. In other words, under such a formula, the larger the actual value in its relation to the declared value, the smaller the percentage of actual recovery. It would seem to impose a penalty upon the shipper in the way of a smaller proportionate recovery for his failure to declare the actual market value of his stock in his shipping contract and the payment of the increased rate, and conversely, the smaller the declared value in proportion to the actual value, the more advantageous the contract to the carrier in the event of its negligent injury of the stock in question. We can not believe any Court will knowingly place such interpretation upon a clause of a shipping contract entered into between carrier and shipper as will have the effect either of penalizing the shipper or of unfairly shielding the carrier from consequences of its own negligence. The true rule must be that rule of construction which will most completely and equitably carry out the contract entered into between the parties.

Respectfully Submitted,

HAYES & LANEY,
Attorneys for Defendant
in Error.

No. 2745.

United States Circuit Court of Appeals

For the Ninth Circuit

SOUTHERN PACIFIC COMPANY, a Corporation,

Plaintiff in Error,

VS.

FRANK R. STEWART,

Defendant in Error.

PETITION FOR A REHEARING.

FRANCIS M. HARTMAN,

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Of Counsel.

Filed this.....day of July, 1916.

FRANK D. MONCKTON, Clerk.

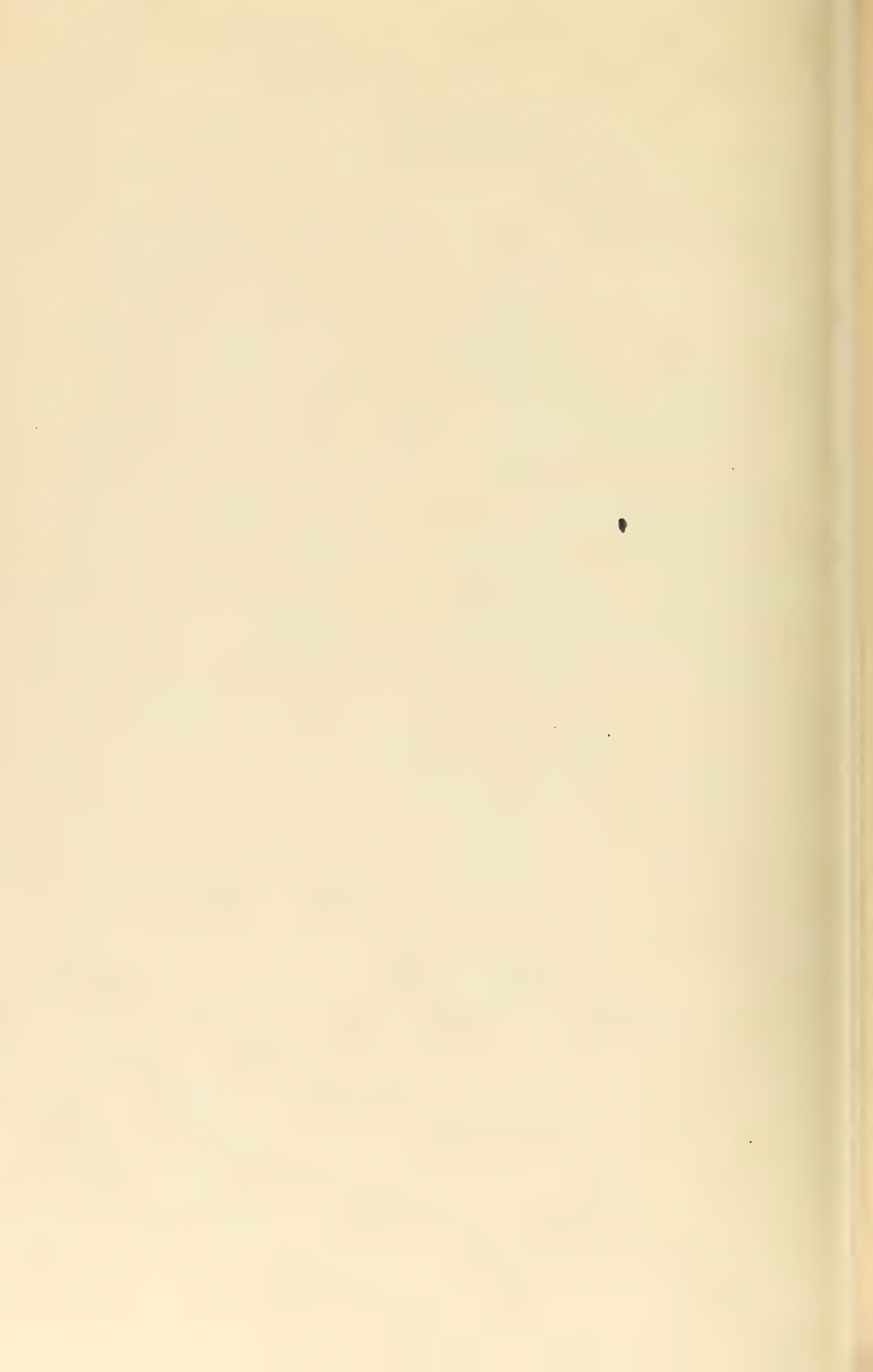
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Frank D. Monckton

Clerk



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United States Circuit Court of Appeals

For the Ninth Circuit

SOUTHERN PACIFIC COMPANY, a Corporation,

Plaintiff in Error,

vs.

FRANK R. STEWART,

Defendant in Error.

PETITION FOR A REHEARING.

To the Honorable, the Judges of said Circuit Court of Appeals.

The plaintiff in error, Southern Pacific Company, hereby respectfully petitions, pursuant to Rule 29 of this Court, that a rehearing be granted herein. The judgment of the United States District Court for the District of Arizona was affirmed by this Court by an opinion filed herein on July 3, 1916, written by His Honor Circuit Judge Gilbert, and concurred in by Their Honors Circuit Judges Ross and Hunt.

The rehearing is asked for on but one ground, which may be stated briefly as follows:

Plaintiff below sued for loss of and damage to livestock shipped over the rails of the Southern

Pacific Company, and its connecting carrier the Arizona Eastern Railway Company, from San Luis Obispo, California, on July 1, 1913, to Phoenix, Arizona. The livestock was shipped under *Live Stock Shipping Order Contracts and Bills of Lading*, which provided that:

“In case any loss or damage shall have been sustained, for which first party is liable, demand or claim for such loss or damage will be made by second party on the Freight Claim Agent of first party, in writing, within ten days after the unloading of the livestock; and that, in event of failure so to do, all claims for loss or damage in the premises are hereby expressly waived, released, and made void.”

The point made by this petition for a rehearing is that, in view of the interstate character of the shipment, and the provisions of the bill of lading above referred to, the plaintiff was without remedy.

It is respectfully submitted:

(1) That the record (p. 85) clearly shows that notice in writing within ten days was not given, but that it was withheld for nearly three months.

(2) That under the bill of lading and the Federal statutes, as construed by the United States Supreme Court, it was utterly incompetent for the carrier to waive such notice (a) expressly, or (b) by conduct, knowledge, receipt of oral notice, or negotiation.

(3) That therefore it is immaterial what the record facts are upon which waiver is found, because, if the carrier was not, from controlling reasons of public policy, permitted to waive the notice directly, this Court has no power, because of the same reasons of public policy, to enforce such waiver on the theory either of waiver or estoppel in pais.

It is further respectfully represented by this petitioner that in deciding, as this Court did, that the plaintiff in the Court below was relieved and released from giving the required ten days' notice, this Court based its opinion in that respect solely upon the state cases cited in its opinion, and failed to give proper and controlling weight to the provisions of the Federal statutes and to the decisions of the Federal Courts interpreting and applying such statutes, which solely govern this case.

We have, in addition, to submit for the consideration of the Court on this petition, certain decisions of the United States Supreme Court which were handed down after this case was submitted on oral argument, and which we claim should control the Court's determination of the instant case on a proper consideration of the record herein.

STATEMENT OF FACTS.

The portion of this Court's opinion which by this petition for a rehearing is questioned by us, is as follows:

“The defendant urges that the Court below erred in refusing to charge as requested that the plaintiff could not recover for any loss or damage to the cattle, for the reason that he failed to make written demand on the defendant within ten days after unloading at the final destination, when he knew of all the damage to the cattle, or could, by the exercise of reasonable diligence, have known the same. The requested instruction was in accordance with

the defense pleaded in the defendant's answer. To that defense the plaintiff had replied that he was relieved from compliance with the provision as to notice in writing within ten days by the facts that on July 4, 1913, and at all times subsequent thereto, the defendant had full knowledge and notice of the injuries and damages to the plaintiff's cattle; that prior to reloading the cattle on that day, five of them had died, that the defendant found it necessary to provide an additional car in which to reload thirteen of the crippled and sick cattle, that at various points between Yuma and Phoenix the train officials in charge of the shipment received telegraphic inquiries from other officials of the defendant inquiring as to the condition and welfare of the cattle, that after arrival at Phoenix one of the crippled animals remained in the defendant's car for more than a week, that from the unloading of the shipment at Phoenix until October 21st of that year the plaintiff and the agents of the defendant and its connecting carrier were almost daily in communication relative to the damages sustained by the plaintiff, that the nature and extent of the injuries to the cattle which arrived alive were such as to render it impossible to determine the amount and extent thereof within the ten-day period, that a number thereof died many days after their arrival at Phoenix, as the result of such injuries, and that the defendant on many occasions prior to October 21st recognized the plaintiff's right to recover on account of his damages. There was proof tending to sustain all the facts so alleged in the reply. We think, therefore, that the Court below committed no error in instructing the jury that in view of the evidence, if they found it to be true, the plaintiff was relieved and released from giving notice within the ten days. *Cockrill vs. Mis-*

souri, K. & T. Ry. Co., 136 Pac. 322, and cases there cited; *Pierson vs. Northern Pacific Ry. Co.*, 61 Wash. 450; *Chicago, R. I. & P. Ry. Co. vs. Spears*, 122 Pac. 228; *Missouri, K. & T. Ry. Co. vs. Frogley*, 75 Kan. 440; *Adams vs. Colorado & S. Ry. Co.*, 113 Pac. 1010."

In our view of the case, as we have already indicated, it is entirely immaterial what knowledge carrier had of the condition of the shipment; what it did to save further loss; what oral negotiations it had with the plaintiff, or what recognition it made of the plaintiff's rights to some damages.

For that reason we will not analyze the testimony, contenting ourselves with saying that the statement of the testimony contained in this Court's opinion is as strongly favorable for the plaintiff as can be made from the record. Even so, we respectfully urge that what the defendant knew or did or said, or what the plaintiff *said*, cannot cure the lack of the required written notice.

FEDERAL CASES.

We come now to the line of Federal cases, only a few of which we shall refer to. We believe they justify the contention made here:

That it is against public policy for this Court to hold that by its knowledge or conduct the carrier waived the ten-day notice provision.

Phillips vs. Grand Trunk Railway, 236 U. S. 662, 667:

“The obligation of the carrier to adhere to the legal rate, to refund only what is permitted by law, and to treat all shippers alike, would have made it illegal for the carriers, either by silence or express waiver, to preserve to the Phillips Company a right of action which the statute required should be asserted within a fixed period. To have one period of limitation where the complaint is filed before the Commission, and the varying periods of limitation of the different States, where a suit was brought in a Court of competent jurisdiction; or to permit a railroad company to plead the statute of limitations as against some and to waive it as against others would be to prefer some and discriminate against others, in violation of the terms of the Commerce Act, which forbids all devices by which such results may be accomplished. The prohibitions of the statute against unjust discrimination relate not only to inequality of charges and inequality of facilities, but also to the giving of preferences by means of consent judgments or the waiver of defenses open to the carrier.”

The Phillips case is referred to by District Judge Wade of the Southern District of Iowa in his ruling on motion for directed verdict in the case of *Theodore Olson vs. C., B. & Q. Ry. Co. et al.*, February 23, 1916. The action was against the C., B. & Q. Ry. Co., the Southern Pacific Company and the Santa Fe, to recover damages for injuries to and death of stock which had been originally shipped under special contracts *in the same form* as those involved in the case at bar. A full copy of the

opinion in the Olson case, which was unreported, will be found in the files of the Clerk of this Court in this case, having been filed since the oral argument. Says the Court, referring to the provision for notice:

“And the Supreme Court of the United States has gone so far as to hold that the railroad company itself cannot waive such a provision in the contract, the reason being that all modern legislation is intended, so far as possible, to put everybody on exactly the same footing, and that one shipper should not have privileges another shipper did not have.” (Citing 236 U. S. 662).

The facts in the Olson case are quite analogous to those in the present case.

Georgia, Florida & Alabama Railway Company vs. Blish Milling Co., decided May 8, 1916, 241 U. S. 190:

In this case flour was shipped interstate under a bill of lading containing a provision that claims for loss, damage or delay must be made in writing to the carrier, etc., within four months after delivery, or, in case of failure to make delivery, within four months after a reasonable time for delivery had elapsed; and that unless claims were so made the carrier should not be liable. The defense was overruled. The Court held, citing numerous cases, that the question of proper construction of the bill of lading of an interstate shipment is a federal question, and that the multitudinous transactions of a

carrier justify the requirement of written notice of misdelivery of merchandise and claims against it, even with respect to its own operations. In this case the delivering carrier converted the shipment, which certainly was as effectual to impart notice to it of its obligations under the bill of lading as in the case at bar was the death of the five head of cattle in transit and the loading of the thirteen disabled cattle in another car to be transported from Yuma to Phoenix. Says the Court (p. 197):

"It is urged, however, that the carrier in making the misdelivery converted the flour and thus abandoned the contract. But the parties could not waive the terms of the contract under which the shipment was made pursuant to the Federal Act; nor could the carrier by its conduct give the shipper the right to ignore these terms which were applicable to that conduct and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations. A different view would antagonize the plain policy of the Act and open the door to the very abuses at which the Act was aimed. *Chicago & Alton R. Co. vs. Kirby*, 225 U. S. 153, 166; *Kansas Southern Ry. Co. vs. Carl*, *supra*; *Atchison, Topeka & Santa Fe Ry. Co. vs. Robinson*, 233 U. S. 173, 181; *Southern Ry. Co. vs. Prescott*, 240 U. S. 630. We are not concerned in the present case with any question save as to the applicability of the provision, and its validity, and as we find it to be both applicable and valid, effect must be given to it."

We think the Blish case perfectly fits the present case. True, in the present case the carrier knew that certain animals had died while in its possession, and that the other animals were in a damaged condition. For the purpose of this applica-

tion for a rehearing we must assume that the carrier knew that that condition had been brought about by its own negligence. But it was moving this shipment under a bill of lading, the terms of which it could not waive or vary, and, as said by the Supreme Court in the Blish case, *supra*, it could not “*by its conduct* give the shipper the right to ignore these terms which were applicable to that conduct, and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations.” To do so would be to permit it to waive indirectly that which under the doctrine of the Phillips case, *supra*, it is not permitted to waive directly. To do so would be to open the door to favoritism among shippers. We submit that it is not sound public policy for Federal Courts to hold that by mere silence, or by negotiation, or by solicitous inquiry as to the condition of the shipment, a carrier may waive that provision which is intended not alone for its benefit but for that of the public by insuring equality of treatment of shippers.

In the Blish case, *supra*, finding that *written* notice had been given was upheld on the proof of a series of telegrams one of which specifically stated that claim was made for invoice value of the flour.

Southern Railway vs. Prescott, 240 U. S. 630:

“It is also clear that, with respect to the service governed by the federal statute, the parties were not at liberty to alter the terms of the serv-

ice as fixed by the filed regulations.” (Citing cases). “This is the plain purpose of the statute, in order to shut the door to all contrivances in violation of its provisions against preferences and discrimination. * * *

“And the question as to responsibility under the bill of lading is none the less a federal one, because it must be resolved by the application of general principles of the common law.” (Citing cases).

Northern Pacific Ry. Co. vs. Wall, 241 U. S. 87:

In this case the view of the Montana Courts, that the notice of claim for damages required by livestock contract might be waived by the carrier, is impliedly condemned by the Supreme Court, the decision, however, turning on the point that such notice may be given to a connecting carrier as well as to the initial carrier.

C. N. O. & T. P. Ry. Co. vs. Rankin, decided by the United States Supreme Court on May 22, 1916:

This case holds that where stock was shipped interstate under a limited-liability contract, the rights and liabilities of the parties depend upon Acts of Congress, the bill of lading, and common-law rules as accepted and applied in Federal tribunals, and that the provisions of the contract are to be considered at least as *prima facie* valid against the shipper, and consequently that the Court cannot hold them void as a matter of law, and permit recovery in violation of any provision.

Clegg vs. St. Louis & San Francisco Railway Company, C. C. A., 8th Circuit, 203 Fed. 971:

Here again was an action to recover damages for delay in delivering cattle shipped interstate under a livestock contract. The answer set up that the notice provided for in the contract was not given. Plaintiff sought to avoid failure to give notice by pleading that the General Freight Claim Agent, who had full authority to handle and adjust all freight claims, received notice of plaintiff's claim without objection as to the time of presentation, or the manner and form thereof, and that he negotiated with the plaintiff, both orally and in writing, on the subject of such claim, and that by reason thereof the defendant waived the notice provision. Says the Court:

“We are clearly of the opinion that the eleventh provision in the contract above quoted, relative to giving notice, was a valid one, and the failure to give the notice fatal to defendant's right to recover.” (Citing cases).

“The provision in the contract that no agent of the company had any authority to waive, modify or amend any of the provisions of the contract, was also a valid provision, and the action of Leith, General Freight Claim Agent of the defendant, in simply negotiating with the plaintiff, was not a waiver of that provision of the contract.”

In the case at bar we have merely: 1st, whatever knowledge the Southern Pacific Company had of the death of five of the cattle, and the condition of the

remainder; 2nd, inquiry by the conductor on instructions by unnamed superiors; 3rd, conversations with agents of the Arizona Eastern, in which a claim for damages was orally asserted; 4th, conversation or conversations with an unidentified person who said that he was a claim agent of the Southern Pacific Company; 5th, the first service of written, formal notice by letter of October 2, 1913, nearly three months after the shipment moved. These surely cannot be held to constitute a waiver or release.

It is clear that mere *conduct* by the carrier does not waive bill of lading provision for notice (Blish case, *supra*).

Kidwell vs. Oregon Short Line, C. C. A., 9th Circuit, 208 Fed. 1:

Here this Court holds that the notice provision in the livestock contract is a reasonable one, and further (page 3):

“It is no compliance with such a provision to remark to a freight agent of the carrier along the line of the route that the shipper is going to put in a claim for damages. Nor is it a compliance to inform the agent at the place of destination that there will be a claim against the company for damages. To impart the information that a claim will be presented is not to present ‘a claim for loss, damage, or detention.’ It does not inform the carrier of the nature, extent, amount, or cause of damage. It gives no definite statement of facts upon which an investigation may be had, or which shows that an investigation is required.”

While this Court in that case, in citing the Spears case (122 Pac. 228) impliedly is of the opinion that there may be circumstances to render the requirement of the notice negligible or impracticable, it does not appear that, as in the case at bar, the controlling effect of the Federal decisions forbidding the carrier to waive the notice, and holding that even conversion by a carrier would not make the notice negligible (Blish case, *supra*), were called to the attention of this Court.

We want also to call the Court's attention to the fact that the language of the Southern Pacific Company bills of lading here involved, as respects notice, is far more definite and comprehensive than in any of the cases so far referred to, except the Olson case, *supra*. Most of the contracts hitherto considered by the Courts have included damage but not loss. Some of such contracts so considered have required "notice" only, without saying what kind of notice it shall be. Many of such contracts—in fact most of them—have not specified the person upon whom notice shall be served. Many of such contracts, particularly those considered in the state cases, have required the notice to be presented within one day, which probably had its effect on the Court passing on the reasonableness of the contract, or on the question of whether notice had been or might be waived. All of these points are covered in the Southern Pacific form, which need not be again quoted.

Ordinary Principles of Waiver and Estoppel Inapplicable Here.

The opinion of this Court overlooks, we submit, two substantial distinctions between ordinary cases of waiver and estoppel and the case at bar. These distinctions may perhaps be better expressed by citations than in our language. They are:

1. "A party of full age, and acting *sui juris*, can waive a statutory or even a constitutional provision in his own favor, affecting simply his property or *alienable rights*, and *not involving considerations of public policy*."

40 Cyc. 267, and cases cited.

Phyfe vs. Eimer, 45 N. Y. 102, 104.

2. "No estoppel *in pais* can be created except by *conduct* which the person setting up the estoppel *has the right to rely upon*, and does in fact rely and act upon."

Bloomfield vs. Charter Oak Bank, 121 U. S. 121-135.

Stewart had no "right to rely upon" the *conduct* of the carrier because under the Federal cases he could not have relied upon the carrier's formal, written waiver.

Many cases have gone elaborately into the distinction between waiver and estoppel, but it would serve no useful purpose in this case for us to expand this petition by indulging in academic reasoning on the question.

The outstanding question here is not whether, by virtue of an estoppel *in pais*, which implies both acts and reliance on those acts, or by waiver, which is a question of intention manifested in an unequivocal manner, the plaintiff was relieved from the necessity of carrying out the notice provision in the contract.

The question is, could the defendant, because of a public policy declared by Congress and upheld by the Courts, waive this provision directly? If he could not, we submit that by no acts, silence, knowledge or acquiescence on its part; by no solicitous inquiry by the carrier as to the condition of the livestock; by no tentative negotiation with plaintiff during the ten days, could the carrier waive a provision evidenced by tariff, the uniform enforcement of which is demanded by considerations of public policy and so declared by the Federal Courts.

We say that even if the board of directors of the Southern Pacific Company had during the ten days in question passed a resolution expressly reciting that the provision in the Stewart contracts respecting notice was thereby waived, the resolution would be a nullity. This is precisely what the Supreme Court means in the Blish case, *supra*, when it says that not even by conduct can the carrier waive a notice provision in a bill of lading.

It is elementary that a waiver must be made by one capable of binding himself.

A waiver, to be binding, must operate by way of estoppel, or amount to a promise supported by a valuable consideration.

Crandall vs. Moston, 50 N. Y. Supp. 145.

In *Libby vs. Haley*, 91 Me. 331, 39 Atl. 1004, the Court says, citing cases, that waiver is a voluntary surrendering of a right, and estoppel is the inhibition of asserting it from mischief that has been caused.

In *McCormick vs. Orient Insurance Co.*, 86 Cal. 260, the Court says that:

“In strictness the term ‘waiver’ is used to designate the act, or the consequences of the act, of one side only, while the term ‘estoppel *in pais*’ is applicable where the conduct of one side has induced the other to take such a decision that he will be injured if the first be permitted to repudiate his acts.”

“Waiver involves a notion or an intention entertained by the holder of some right to abandon or relinquish instead of insisting on the right.”

Fairbanks vs. Baskett, 98 Mo. App. 53;
71 S. W. 1113.

Public policy, as declared by law of Congress and enforced by decisions of the Federal Courts, forbids the parties to a contract of shipment from varying its terms under any of the principles applicable to ordinary contracts which are not controlled by public policy. In ordinary contracts the parties may

by course of conduct waive their rights or estop themselves from enforcing particular provisions; but there is no reason for the application of the ordinary rules as to waiver or estoppel to a contract which the law declares shall be followed absolutely and according to its terms. Hence, in speaking of these contracts concerning interstate shipments, the Supreme Court says (Phillips case, *supra*) that the law makes it illegal for the carriers, either by silence or express waiver, to preserve to the shipper a right of action which the statute requires should be asserted within a fixed period; or to permit a carrier to plead the statute of limitations as against some and to waive it as to others, in violation of the law which forbids all devices by which such results can be accomplished.

The Federal cases above cited show that the bill of lading provision requiring notice to be given within a certain time is of equal dignity—as a limitation upon the right of a shipper to recover—with a congressional statute of limitations. There is no difference in principle between the congressional statute of limitations and the provision in the bill of lading. In the first case Congress has imposed conditions which must be observed by carrier and shipper alike, and which the carrier, as decided by the Supreme Court, is not permitted to waive. In the second case Congress has permitted the carrier, by filing tariffs with the Commission, to prescribe forms of contract known as bills of lading, or to

prescribe terms which are to be inserted in these bills of lading, and among these terms the carrier has power to prescribe the time within which and the manner in which and the person to whom claims for loss or damage against it must be presented. When these tariffs and forms are filed and, by acquiescence, approved by the Commission they have the effect of a Congressional Act. This statement requires neither citation nor elaboration.

While in the past there has been a contrariety of opinion among the state courts as to the reasonableness and enforceability of these provisions, they have been uniformly upheld by the Federal Courts. These provisions are in themselves equivalent to statutes of limitation, as they are made pursuant to a power delegated by Congress to the carrier, which power is necessarily so delegated because of the varying conditions in different parts of the country, and because of the necessity of flexibility in commercial transactions.

It may be that the enforcement of this rule in the case at bar will work some hardship on the plaintiff. That, however, is a question apart from this case.

As said by Mr. Justice Hughes in *Louisville & Nashville R. Co. vs. Maxwell*, 237 U. S. 94, on page 97:

“Under the Interstate Commerce Act the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged

with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. *This rule is undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.*"

REVIEW OF STATE CASES RELIED ON BY THIS COURT.

In view of what we have said in the foregoing, it is perhaps unnecessary to analyze the state cases cited by this Court in its opinion. We, however, shall do so for the purpose of pointing out that in none of those cases was the Federal question raised, and, apparently from the decisions, in none of those cases did the Court consider the effect of the Acts of Congress and the Federal decisions in prohibiting waiver of a notice clause in a bill of lading. But we take the position squarely that even if these state courts had considered the Federal question and had decided that the Federal statute did apply, their decisions even then would not control or weigh against the decisions of the highest court in the land.

The five cases cited by the Court are of course only a few of the many cases decided by state courts, in some of which similar provisions in bills of lading

were held to be waived by conduct such as that of the carrier in the case at bar, and in others of which it was held that such conduct did not amount to a waiver. We will not take the time nor impose on the patience of the Court by attempting to collect a mass of cases decided in state courts in opposition to the principles announced in the five cases cited by this Court. We have only to say that in our view it would make no difference if all of the state courts' decisions had been in entire consonance with every principle announced in the five cases cited by this Court, and that even then the decisions of the United States Supreme Court on the Acts of Congress would still override and control the views of state tribunals.

Typical of the line of state cases in which the Court clearly perceived the difference between that which a man may waive either directly or on the principle of estoppel, and that which he may not waive because public policy forbids it, is the case of

Pennsylvania Railroad vs. Titus, New York Court of Appeals, September 28, 1915; 216 N. Y. 17; 109 N. E. 857.

This was a case where the carrier had mistakenly charged the defendant less than the correct amount of the freight according to tariff rate. The freight moved on a bill of lading providing that the owner or consignee should pay freight, and that in accepting the bill of lading the shipper, owner and con-

signee agreed to be bound by all of the stipulations of the bill. The consignee had remitted to the consignor the net proceeds of the sale of the shipment, so that if the mistake of the carrier's agent was unavailing to the consignee the loss would fall upon him. The Court says (page 858):

“The defendant, therefore, became bound to pay to the plaintiff the freight charges—not those charges as erroneously or illegally computed by the plaintiff or himself, but the lawful and correct charges. *If the amount of them were subject to the determination of the plaintiff, it might of course remit them in part, or perhaps estop itself from collecting a balance.* We have no concern here in regard to such hypothesis. The one and only lawful and correct freight rate was that set forth in the schedule or tariff filed in the office of the Interstate Commerce Commission and duly published and posted. The United States statutes, known as the Interstate Commerce Act (Act February 4, 1887, c. 104, 24 Stat. 379), made that rate arbitrary, immutable by the agreement, mistake, or artifice of the parties, and not to be deviated from. The consignor, consignee, and carrier were alike charged with full knowledge of it and its inescapable force, and it was the rate which the defendant agreed to pay in accepting the goods. *Central R. Co. of N. J. vs. Mauser*, 241 Pa. 603, 88 Atl. 791, 49 LRA. (N. S.) 92; *N. Y., N. H. & H. R. Co. vs. York & Whitney Co.*, 215 Mass. 36, 102 N. E. 366; *Pennsylvania R. Co. vs. Crutchfield*, 55 Pa. Super. Ct. 346; *L. & N. R. Co. vs. Maxwell*, 237 U. S. 94, 35 Sup. Ct. 494, 59 L. Ed. 853; *U. P. R. Co. vs. American Smelting & Refining Co.*, 202 Fed. 720, 121 C. C. A. 182.

“Obviously, the payment of a part of the correct amount did not fulfill or release performance by the defendant of his contract. *The record does not present a question of estoppel on the part of the plaintiff, which could not, by its act, intentional or unintentional, relieve the defendant or itself from the compulsory direction of the statutes.* The fact that the defendant had remitted to the consignor the net avails of the sale of the peaches is immaterial.”

The cases cited by this Court in its opinion in the case at bar are:

Cockrill vs. Missouri, Kansas & Texas Railway Company, 136 Pac. 322 (Kansas):

This was a shipment of cattle from Parker, Kansas, to Kansas City, Missouri. Some of the cattle died and others were crippled in transit. The Court held that as the Company inspected and made a record of the condition of the shipment at the time of delivery, it could have had no benefit by receiving a written notice of what it already knew respecting the dead and crippled cattle. Four Kansas cases and no Federal cases are cited in support of this conclusion. The Federal questions raised in this petition were not raised in the Cockrill case, so far as the opinion shows.

Pierce vs. Northern Pacific Railway Company, 61 Wash. 450:

This was an interstate shipment of horses on a livestock contract. As in the Cockrill case, the Federal questions were not raised. Notice in writ-

ing of claim for damages was required by the contract. The Court held that where the nature and extent of the injuries to the animals surviving could not be ascertained with any degree of certainty within the limit of time provided in the contract, the stipulation was unreasonable and inapplicable, and that the stipulation had no application to the animals which died before their arrival at the place of destination. This is in direct conflict with the Federal decisions we herein cite.

Chicago, Rock Island & Pacific Railway Company vs. Spears, 122 Pac. 228 (Oklahoma):

Here the cattle moved interstate under a livestock contract providing that for the recovery of "damages for injury to or detention of livestock, or delay in transit," notice in writing should be served within one day after delivery of stock at destination. The Court held that as to dead cattle they did not come within the terms of the contract requiring notice of claim for *damages* to be given. It held also that the defendant carrier had waived the condition of notice because at the time the cattle were received it was impossible to know the full extent of the injuries. The contract provision was that notice should be served within one day after the delivery of the stock. Here again no Federal question was raised, and the considerations upon which stress is now put by the Federal Courts were apparently not before the Court.

Missouri, Kansas & Texas Railway Company vs. Frogley, 75 Kan. 440 (89 Pac. 903):

This case is cited in the Cockrill case *supra*, and apparently was decided on the ground that the stipulation in the contract requiring notice was against public policy if the loss of the animals was due to the negligence of the carrier. It also held that because the animal died while in the company's possession the company had the opportunity to ascertain the extent of the loss. Here again the Federal question was not raised.

Adams vs. Colorado & Southern Railway Company, 113 Pac. 1010 (Colorado):

This was an intrastate shipment, in which the provision of the contract that an action should be brought within ninety days was held to be unreasonable and void. It was also held that the railroad was estopped from availing itself of the ninety-day clause because it had verbally agreed with claimant that if payment of the claim was finally refused it would waive compliance.

Uncertainty of Amount of Damage Sustained No Excuse for Failure to Give Written Notice Within Ten Days.

In the decisions of some of the State Courts, particularly those of Missouri, Oklahoma, Kansas and Colorado, which are the most extreme of the states which have refused to recognize the validity of notice provisions in the bill of lading, there appears

here and there the idea that because, in some cases of livestock which has been injured in transit, the damage to the stock cannot be ascertained definitely within the time limited by the bill of lading for presentation of notice, therefore in some mysterious way the provision for the notice is, and ought to be in reason, definitely postponed until the damage to the stock is capable of being itemized and a claim presented accordingly. On principle we submit that that cannot be true, because the shipper knows, or is presumed to know, that under a contract such as that involved in the present case he must present his claim for loss or damage within a certain specified time—in this case ten days. If he knows, as the plaintiff Stewart knew in the present case, that his shipment was short five cows when it reached destination, that is a case of *loss* which is specifically covered by the contract, and there is no possible excuse for his failing to present a written claim as prescribed by his contract. If he knows, as Stewart knew in the present case, and says he knew, as abundantly appears from the evidence, without conflict, that the remainder of the shipment had reached destination in a *damaged* condition, the fact that the extent of the damage was uncertain, and perhaps unascertainable for some time, is no better reason for failure to carry out the bill of lading provisions. In other words, Stewart knew, according to his own testimony (Record p. 84), that when the cattle reached Phoenix five had died and the others were “in a badly stove-up condition.”

What the result of that condition would be, assuming that he knew and we knew that it was due to our negligence, is something that he could not foretell, nor could we foretell. But we submit that it was certainly incumbent upon him to serve notice in the formal way contemplated by the bill of lading, to the effect that we would be held responsible for whatever damage resulted to him as the result of our negligence, thus, as all the cases hold one object of the clause to be, giving us the opportunity of investigating and, to the extent to which we might be permitted to do so, endeavoring to remedy the effects of whatever negligence was chargeable to us.

Apparently, from the record, he made no claim for these uncertain damages, but merely said to the freight agent of the Arizona Eastern at Phoenix that he had a claim for damages against the Southern Pacific. That might well have been for the five cows that were lost. He was not definite in any respect, and did not become definite until October 2, nearly three months after the receipt of the shipment, when he did file a claim for this damage to the cows which were alive when they reached Phoenix, and which he says even at that time was not fully ascertainable. In other words, the fact that some damage had been sustained by the cows that were alive when they reached Phoenix was apparent to Stewart, as he admits, as well as to everyone else, and yet, ignoring the bill of lading

provision, he submitted no claim therefor until nearly three months later.

Suppose that we knew that the cows had reached Phoenix in a damaged condition, and that we had been negligent: The ten days go by without a written claim being filed as provided by the bill of lading; it then would be entirely reasonable for the railroad company to assume that the animals may have recovered, or that the damage may not have been such as might reasonably be expected as a consequence of admitted negligence, or that, even if the shipment suffered depreciation in market or intrinsic value, the consignee had nevertheless sold them for what would have been their fair market value, but for the carrier's negligence, and therefore either might not care to claim a fictitious damage, or might be satisfied with the result of his sale, thus indefinitely postponing and cutting off our investigation.

Or, he might have sold the damaged cattle for more than \$30 per head, the amount of the limited liability, in which event claim would have been futile.

Under these circumstances, therefore, the clause in the bill of lading providing for the ten-days notice—looking at the case in its most favorable aspect for the plaintiff below—either meant what it said, or meant nothing. It either meant that for an apparent, but prospective and unascertained

damage the plaintiff might indefinitely delay presentation of claim, or that, having such evident reason to anticipate such damage, he must have presented his claim therefor within the time prescribed by the bill of lading.

The reasoning of the State decisions cited in this Court's opinion does not hold together.

Moreover, it is directly opposed to Federal statutes and decisions.

The only safe course to follow in the case of an interstate shipment is to hold the shipper and carrier strictly to the provisions of their contract.

That is the only course justifiable under the Federal cases we have cited. Certainly no Court would hold that if Stewart had in writing and within the ten days stated that damage had accrued to the cattle which reached Phoenix alive, but that he could not determine at that time the amount of the damage, we could thereafter plead a lack of certainty or itemization in the claim so filed.

Apparently, he chose to leave the matter in the air until it suited his convenience, nearly three months later, to file a claim which he should have filed within ten days after July 5, 1913.

IN CONCLUSION.

It is respectfully submitted, therefore, that in view of the foregoing and especially in view of the very recent Supreme Court decisions now called to Your Honors attention, a rehearing herein should be granted on the question of whether or not the plaintiff below was relieved from the obligation to give notice as prescribed by the bill of lading under which the interstate shipment moved, it being conceded that he did not in fact give such written notice.

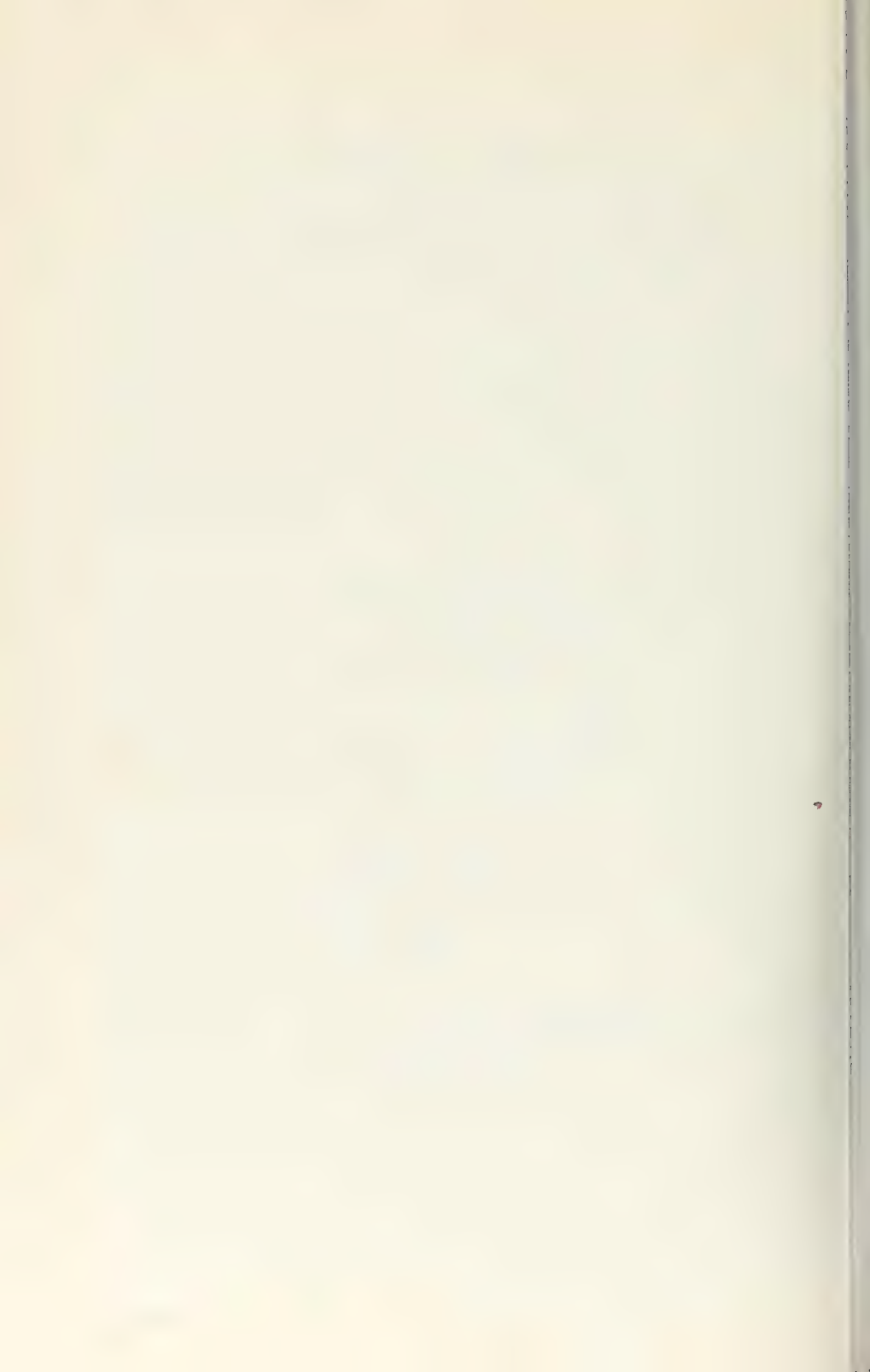
In the event this petition be granted we do not waive the other points for reversal made by plaintiff in error, but we believe the point we make on this petition to be sufficient to dispose of this case.

Dated July 18, 1916.

Respectfully submitted,

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United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

JOHN GRANT LYMAN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VOLUME I.
(Pages 1 to 416, Inclusive.)

Upon Writ of Error to the United States District Court of the
Southern District of California, Southern Division.

Filed

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

PAUL SCHENCK, Esq., and JOSEPH CITRON, Esq., Homer Laughlin Building,
Los Angeles, California.

For Defendant in Error:

ALBERT SCHOONOVER, Esq., United States
Attorney, Federal Building, Los Angeles,
California. [6*]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America
to the Honorable the Judge of the District Court
of the United States for the Southern District
of California, Southern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, between John
Grant Lyman, plaintiff in error, and the United
States of America, defendant in error, a manifest
error hath happened to the great damage of said

*Page-number appearing at foot of page of original certified Record.

John Grant Lyman, plaintiff in error, as by his complaint appears:

We being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error [7] what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 6th day of February, in the year of our Lord, One Thousand Nine Hundred and Fourteen, and the year of our Independence the one hundred and thirty-eighth.

[Seal]

WILLIAM M. VAN DYKE,
Clerk of the District Court of the United States for
the Southern District of California.

By Chas. N. Williams,
Deputy Clerk.

The above Writ of Error is hereby allowed.

OLIN WELLBORN,
District Judge.

I hereby certify that a copy of the within writ of error was on the 6th day of February, 1914, lodged in the clerk's office of the said United States District Court, for the Southern District of California, Southern Division, for said defendant in error.

WILLIAM M. VAN DYKE,
Clerk of the District Court of the United States for
the Southern District of California.

By Chas. N. Williams,
Deputy Clerk. [8]

[Endorsed]: No. 672—Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John Grant Lyman, Defendant. Writ of Error. Filed February 6, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.
[9]

Citation on Writ of Error.

United States of America,
Southern District of California,
Southern Division,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from date hereof, pursuant to a writ of error on file in the clerk's office of the District Court of the United States, for the Southern District of California, Southern Division, in that certain cause num-

bered 672—Crim. in said District Court, wherein John Grant Lyman is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and entered against the said John Grant Lyman, plaintiff in error, in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OLIN WELLBORN, United States District Judge for the Southern District of California, this 6th day of February, in the year of our Lord, one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

OLIN WELLBORN,

U. S. District Judge for the Southern District of California. [10]

[Endorsed]: No. 672—Crim. In the United States District Court, for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John Grant Lyman, Defendant. Citation. Received copy of the within Citation this 6 day of Feb., 1914. Edward A. Regan, Attorney for Plaintiff. Filed Feb. 6, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [11]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 672—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant. [12]

Indictment.

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

At a stated term of said Court, begun and holden at the city of Los Angeles, county of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of July, in the year of our Lord one thousand nine hundred and thirteen,

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter mentioned, the Panama Development Company, (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control,

charge and management of John Grant Lyman *alias* John G. Lyman (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their money and property, in and by inducing, by false and fraudulent representations, said [13] persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Panamanian Government), in the purchase of lands belonging to said Panamanian Government (said lands being hereinafter referred to as said Government lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the

sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said money and said property so intended to be secured and converted to the use of said defenant, being to the Grand Jurors unknown.

That said scheme and artifice to defraud so devised and intended to be devised by said defendant as aforesaid, [14] was substantially as follows:

That he, the said defendant, intended to and would organize and incorporate, and cause to be organized and incorporated, said Panama Development Company, and intended to and would, represent, announce, publish and advertise, and cause to be represented, announced, published and advertised, to each and all of said persons so intended to be defrauded as aforesaid, under and in the name of said corporation, that said corporation had a paid-up capital of Fifty Thousand Dollars (\$50,000); that some of the officers and directors of said corporation were men of prominence in, connected with and employed by said Panamanian Government, and that the other officers and directors of said corporation were men of prominence elsewhere; that said corporation was the agent of said Panamanian Government for the sale of said Government land; that said Panamanian Government offered for sale, through the said corporation as said agent, said Government

lands, consisting of agricultural, timber and mineral lands, situated in the District of Cocle, Veragua and Chiriqui, in said Republic of Panama, to persons desiring to purchase said Government lands, by such persons making application for such purchase through said corporation as agent aforesaid, at a price varying from three to five dollars per acre, payable one-half down to said corporation as agent aforesaid, at the time said application was made for the purchase of said Government lands, and the balance of said purchase price to be paid to said corporation within four years; that upon [15] said corporation receiving from the said persons so intended to be defrauded, said application for the purchase of said Government lands through said corporation as agent aforesaid, and the receipt of one-half the purchase price of said lands as aforesaid, the said corporation would immediately file said application with said Panamanian Government through the representative of said corporation in said Republic of Panama, and thereupon said Panamanian Government would immediately make the allotment of said Government land as designated in said application, to the said applicant thereof, in the order said applications were received by said corporation as aforesaid; and thereupon said Panamanian Government would immediately issue a provisional title to said Government lands referred to in said application, direct to the said applicant, and would thereafter issue a complete and full title to said applicant for said Government lands mentioned in said application upon the payment by said applicant of the re-

mainder of the said purchase price to the said corporation, and upon the cultivation of four-fifths of said Government agricultural land; that said corporation had experts in said Republic of Panama who were familiar with the location and character of said Government lands, and who, therefore, could and would select the best of said Government lands for the persons making said application to purchase the same through said corporation as aforesaid; that by reason of said experts said corporation could select better lands for said applicants than if said applicants were personally [16] in said Republic of Panama; that said corporation could and would furnish maps showing the location of said Government land offered for sale by said corporation, agent as aforesaid, and could and would designate on such maps the location of the lands so offered for sale; that said corporation had sold to an American Colony ten thousand (10,000) acres of said Government land situated in the District of Agua Dulce in the said Province of Coele, Republic of Panama; that said corporation as agent aforesaid, offered for sale and would sell said Government lands situated in said District of Agua Dulce upon applications being made as aforesaid and on the aforesaid terms and conditions; that a railroad was being constructed from said city of Panama to the said city of David in said Republic of Panama; that said corporation was clearing and cultivating some of said Government land which had theretofore been sold through said corporation as agent as aforesaid, and that said corporation would clear and cultivate said Government land

purchased as aforesaid; that said corporation had and offered for sale sixteen thousand (16,000) acres of said Government timber land situated in the said Province of Veragua, Republic of Panama; that on August 1, 1911, the price of said Government agricultural lands offered for sale as aforesaid, would be increased by said Panamanian Government to Six Dollars (\$6.00) per acre; that if at any time within two years after making said application for purchase of said Government land as [17] aforesaid, said applicant was dissatisfied with said purchase, any and all money and property so paid and transferred by said applicant for the purchase of said Government lands as aforesaid, would be returned to said applicant by said corporation on demand of said applicant made upon said corporation.

That each of the aforesaid representations, announcements, publications and advertisements so made and so intended to be made by the said defendant as a part of said scheme and artifice to defraud, were intended to be and were false and fraudulent as he, the said defendant, at the time of making and intending to make the aforesaid representations and statements, and at all times in this indictment mentioned, well knew and intended, and the said defendant at all times in this indictment mentioned intended thereby to deceive and defraud said person so intended to be defrauded, by inducing said persons to part with their said money and property as aforesaid.

That in truth and in fact, as he, the said defendant, at the time of so devising and intending to devise

said scheme and artifice to defraud, and at the time of making and intending to make the aforesaid false and fraudulent representations and statements, and at all times in this indictment mentioned, well knew and believed, said corporation did not and would not, at any time or at all, have a paid-up capital of Fifty Thousand Dollars (\$50,000), and did not and would not have paid-up capital in any amount; that the officers and directors of said corporation were not men of prominence [18] in, and were not connected with, and were not employed by said Panamanian Government, and were not men of prominence elsewhere, but the names of said directors and officers of said corporation were selected and designated and named solely by said defendant, and all the acts and representations made by said corporation and said officers and directors thereof, were made by and under the direction and control of said defendant; that said Panamanian Government did not and would not offer for sale through said corporation as said agent aforesaid, the Government lands hereinbefore described, on the terms hereinbefore set forth, nor at all; that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, nor for the sale of any lands; that said corporation did not have its principal office nor any office, in said city of Panama, and did not have a branch office nor any office, in said city of David, but in truth and fact, the principal office and the only office of said corporation was in the said city of Los Angeles; that said corporation would not immediately, nor at all, file

nor cause to be filed, said applications for purchase of said Government lands, with said Panamanian Government, and said applicant would not receive from said Panamanian Government, a provisional title nor any title, to the Government lands referred to in said application, and would not, after the payment of the balance of said purchase price to said corporation on the terms and conditions aforesaid, nor at all, receive a full and complete title, nor any title, [19] to said Government lands, from said Panamanian Government as aforesaid; that said corporation did not have experts in the Republic of Panama who were familiar with the location and character of said Government land, and who could make the best selection thereof for said applicants, nor any experts in said Republic of Panama at all; that said corporation could not and would not furnish maps showing the location of said Government lands offered for sale as aforesaid, and could not and would not designate on such maps the location of said Government lands, but in truth and fact said corporation would furnish and issue maps prepared under the direction of said defendant purporting to show the location of said Government lands, which in truth were not Government lands offered for sale by said Panamanian Government through said corporation as said agent, but were maps of land shown to said persons so intended to be defrauded, for the purpose and with the intent of deceiving and defrauding them as to the location of said Government lands offered for sale as aforesaid; that said corporation never at any time in this indictment men-

tioned, had sold ten thousand (10,000) acres of said Government land located in said District of Agua Dulce, nor any other District in said Republic of Panama, to an American Colony, nor to any colony; that said corporation did not and would not have for sale any of said Government lands in said District of Agua Dulce as aforesaid; that a railroad was not being [20] constructed from said city of Panama to said city of David; that said corporation was not clearing nor cultivating any of said Government lands, and would not clear nor cultivate any of said Government lands, as aforesaid; that said corporation did not have and could not offer for sale, sixteen thousand (16,000) nor any number of acres of said Government timber lands in said Province of Veragua; that said Panamanian Government would not, on August 1, 1911, increase the price of said Government lands to Six Dollars (\$6.00) per acre, but said corporation, under the direction and control of said defendant, intended to and would arbitrarily raise said price to Six Dollars (\$6.00) per acre; that said corporation would not and did not intend to pay and return to persons paying their money and property to said corporation as agent aforesaid, for the purchase of said Government lands, such money and property upon demand within two years, but said defendant intended to and would convert to the use and benefit of himself and to the use and benefit of said corporation, such money and property. [21]

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as

aforesaid, did, on the 28th day of August, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully and wilfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, within the Southern District of California, a certain sealed envelope to be sent and delivered by said postoffice establishment of the United States, addressed to Mr. Frederick L. Anderson, Soldiers Home, Cal., Ward 9, which said envelope then and there contained a certain letter in substance as follows:

“Principal Office:

City of Panama, Isthmus of Panama

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY.

216 Mercantile Place.

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050

Home A 3425

Los Angeles, Aug. 28, '11.

Mr. F. L. Anderson,

Dear Sir, [22]

Yours of the 27th inst. received and contents

noted. I can do as you requested for Mr. Friman. I will reserve 20 acres for him in Block 29—right next to his other land—on the same terms as he bought the other.

Thanking you & Mr. Friman,

Yours very Truly,

PANAMA DEVELOPMENT COMPANY.

By E. A. LYNN."

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.
[23]

Second Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter metioned, the Panama Development Company (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control, charge and management of John Grant Lyman *alias* John G. Lyman, (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their

money and property, in and by inducing, by false and fraudulent representations, said persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Panamanian Government), in the purchase of lands belonging [24] to said Panamanian Government (said lands being hereinafter referred to as said Government lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant, at the time of devising and intending to devise said scheme and artifice to defraud, and at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said

money and said property so intended to be secured and converted to the use of said defendant, being to the Grand Jurors unknown.

That said scheme and artifice to defraud so devised and intended to be devised by said defendant, is fully set forth and described and explained in the first count of this indictment, and said first count is hereby referred to for a full and particular description, statement and explanation of said scheme and artifice to defraud, and the same is hereby made a part [25] hereof.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as aforesaid, did, on the 22d day of August, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully and wilfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, within the Southern District of California, a certain sealed envelope to be sent and delivered by the post-office establishment of the United States, addressed to Mr. D. Willits, Tucson, Ariz., Gen. Del., said envelope containing then and there, a certain letter and a certain map, which said map consisted of a

large piece of paper bearing on one side a plat marked "Agua Dulce Colony Province of Cocle, Panama," and on the other side thereof, a map bearing the inscription "Map of the Republic of Panama," and which said letter then and there contained in said envelope, was in substance as follows:
[26]

"Principal Office:

City of Panama, Isthmus of Panama.

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050

Home A 3425

Los Angeles, Aug. 22, 1911.

Re GOVERNMENT LANDS IN PANAMA.

Mr. D. Willits,

General Delivery,

Tucson, Arizona.

Dear Sir:—

Your attention is invited to Panama Government lands, which can now be obtained under such conditions as make them virtually a gift, the price being \$5.00 an acre; terms, \$2.50 upon application, and \$2.50 in four years, with no taxes to pay until one year after final payment is made.

The opening of the Panama Canal will undoubt-

edly work wonders in Panama, as it will mean the development of its Western Coast, which has a delightful climate and a soil of great fertility.

It is not generally known that the death rate of this section of Panama is only about one-half of the average City in the United States, and it is in this particular region that the United States Government is building its Sanitarium for the Canal employees.

The lands in this section are extraordinarily fertile, and that they have not been developed heretofore has been due chiefly to two reasons: First, a lack of stable Government; second, a total lack of transportation facilities. Since the United States has guaranteed the integrity of Panama, revolutions, which were formerly a yearly occurrence, have ceased, and now life and property there are as safe as in any State in the Union. [27]

The Panamanian Government is naturally anxious to have its country developed, and every reasonable effort to that end is being made. In order to derive, too, the fullest advantage from the opening of the Canal, the Government is now constructing a railroad from Panama to David, which will give easy access to this wonderfully fertile region, and open it to the markets of the world.

While at the present time Panama may seem remote, it will soon be a stopping place for the ships from all parts of the Globe, and no signal port will enjoy such service, or have so many markets to choose from.

Until recently it has not been possible for other

than a Panamanian to acquire Government lands, but since the United States came in, they have been thrown open to all Nationalities on equal terms, and considering their great desirability, the terms of payment cannot be considered onerous.

Arrangements have been made, too, whereby these lands may be cultivated on shares, so that all a prospective Colonist or investor in Panama lands need do is to purchase the raw land from the Government and the developing work can be paid from the crop itself.

In this development we are acting as Government Agents, and applications placed with us will have the same force and effect as though lodged directly with the Government in Panama, and obviates the necessity of your making a personal application there.

The sugar industry, particularly, promises to prove a very profitable one, as in this rich, virgin soil, resulting from the decomposition of vegetable and animal matter for Centuries, cane yields twice as much saccharine matter per acre as Cuban lands, which are considered remarkably rich, and four times as much as Louisiana lands, which are the best in the United States. Furthermore, when the cane is once planted, it reproduces itself from 12 to 25 years without replanting, which speaks for itself as to the fertility of the soil.

While all Government lands are the same price, those in districts which will have good transit facilities, and where foreign Colonists are established, will more rapidly enhance in value than lands in the back

country. At the present time we are strongly advising the purchase of lands at Agua Dulce, Province of Cocle, one of the best sugar districts in Panama, where we recently arranged for the sale of 10,000 acres to an American Colony. A large sugar mill is now under construction in this town which is directly on the line of the new railroad, has a fine harbor, and is only about [28] 100 miles from the Western entrance of the Canal.

Enclosed herewith is a map of Panama, together with a special map of the district of Agua Dulce, showing the lands sold in that district and what is still open, and with prompt action on your part we can locate you at this point. There is not an acre here that will not be worth ten times its cost by the time the Canal is opened, and much of it is likely to be worth from \$500 to \$1,000 an acre.

Within the area as marked on the map, we will reserve 100 acres for you at \$5 per acre, payable \$2.50 per acre down, and \$2.50 per acre in four years, with no taxes to pay until one year after final payment is made.

The title to this land is perfect, being Government title, and will come direct from the Government to the purchaser.

There can be no question regarding the value of the land, or the advantages that will result from the opening of the Canal, and we trust you will not regard this as an ordinary Colonization project, but rather one where every safeguard is being offered by the Panamanian Government to Colonists and investors who may become interested in Panama lands,

which are destined to prove very profitable to those acquiring same.

As earlier stated, we will, if desired, undertake cultivation of same on shares, according to the terms of contract, form of which is enclosed herewith, which you will see is fair to both parties.

We regard the growing of sugar cane as one of the most desirable forms of cultivation that can be taken up, as there is practically no hazard attached to it, and the returns cannot fail to be considered other than satisfactory, as after the first year there will be a net return of from \$50 to \$75 per acre, and an income of \$5,000 per annum may be expected after the first year, of which one-half would go to the owner of the lands, should the work be done on shares. (The United Fruit Company reported a profit last year of One Million, One Hundred Thousand Dollars (\$1,100,000) from the cultivation of 24,000 acres. They are the largest cultivators of Panama Government lands, and this year will have over 30,000 acres under cultivation.)

It may be, now that your interest in Panama is aroused, you may wish to investigate personally as to our statements. There is nothing that would be more welcome to us. Our position of co-operation with the Government is such that we will place you in communication with Governmental authorities, who will be only too [29] glad to answer any communications addressed to them.

The Governing Board of this Company comprises some of the best known men in Panama. The President, HERNAN DE LA GUARDIA, is the best

known scientific tropical agriculturist in Panama.

Another member of the Board, SR. C. QUEL-QUEJEU, is head of the firm of C. Quelquejeu & Company, the most widely known Merchants in the Republic.

SR. SANTIAGO DE LA GUARDIA, a third member, is the ATTORNEY GENERAL of Panama, and was formerly Secretary of State of that country.

JOHN REDPATH, the Vice-president, was formerly connected with the British Bank of North America, and all the Directors are well known men.

In the interval may we suggest that you make your reservation with such remittance as will indicate your good faith, and any request upon your part to return same, should your own personal investigation not bear out our statements, will find us only too willing to comply.

Regarding the amount of land that can be acquired, we can secure for you any part of 500 acres in the tract we have marked, or you may have any smaller proportion, the minimum being 10 acres, on the same terms and conditions, both as to cost of land, and, if desired, cultivation of same.

Awaiting the courtesy of an early reply, we are,

Very truly yours,

PANAMA DEVELOPMENT COMPANY.

Address all mail to

E. A. LYNN.

Miss E. Andreen requested us to write you.

E. LYNN."

Contrary to the form of the Statutes of the United States in such case made and provided, and against

the peace and dignity of the said United States.
[30]

Third Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter mentioned, the Panama Development Company (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control, charge and management of John Grant Lyman, *alias* John G. Lyman (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their money and property, in and by inducing, by false and fraudulent representations, said persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Panamanian Government), in the purchase of lands be-

longing [31] to said Panamanian Government (said lands being hereinafter referred to as said Government lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant, at the time of devising and intending to devise said scheme and artifice to defraud, and at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said money and said property so intended to be secured and converted to the use of said defendant, being to the Grand Jurors unknown.

That said scheme and artifice to defraud so devised and intended to be devised by said defendant as aforesaid, is fully set forth and described and explained in the first count of this indictment, commencing [32] on page three (3) thereof, with the words "that he, the said defendant, intended to and would," and continuing through pages three

(3), four (4), five (5), six (6), seven (7), eight (9) and nine (9) of this indictment, and ending on page nine (9) of this indictment with the words "would convert to the use and benefit of himself and to the use and benefit of said corporation, such money and property," and the said first count and the said part described, is hereby referred to for a full and complete description, statement and explanation of said scheme and artifice to defraud, and the same is made a part of this count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as aforesaid, did, on the 24th day of July, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully and willfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, [33] within the Southern District of California, a certain letter to be sent and delivered by said postoffice establishment of the United States, which said letter is in substance as follows:

“Principal Office,
City of Panama, Isthmus of Panama.

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050.

Home A 3425.

Los Angeles, July 24, 1911.

Mr. Thomas O'Rourke,
Box 51, R. F. D.,
San Fernando, Calif.

Dear Sir:—

We are in receipt of your favor of the 21st instant containing remittance of \$15. Will forward contract as soon as made out. We thank you very much for this remittance, and assure you that we will make a good selection for you.

We are also in receipt of your favor of the 23d instant, containing the signed contract. We regret same was not filled in before it was sent you, but will fill it in here.

The name and address of the physician you spoke of, is Dr. John G. Lyman, 2068 Hobart Boulevard, Los Angeles. [34]

Again thanking you for the remittance, we beg to be

Yours very truly,

PANAMA DEVELOPMENT COMPANY.

S/C

By L. R. SMITH."

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

[35]

Fourth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter mentioned, the Panama Development Company (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control, charge and management of John Grant Lyman *alias* John G. Lyman (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their money and property, in and by inducing, by false and fraudulent representations, said persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by

reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Panamanian Government), in the purchase of lands belonging to said Panamanian Government (said lands being [36] hereinafter referred to as said Government lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant, at the time of devising and intending to devise said scheme and artifice to defraud, and at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said money and said property so intended to be secured and converted to the use of said defendant, being to the Grand Jurors unknown.

That said scheme and artifice to defraud so devised and intended to be devised by said defendant, is fully

set forth and described and explained in the first count of this indictment, and said first count is hereby referred to for a full and particular description, statement and explanation of said scheme [37] and artifice to defraud, and the same is hereby made a part hereof.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as aforesaid, did, on the 6th day of June, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully and willfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, within the Southern District of California, a certain sealed envelope to be sent and delivered by the postoffice establishment of the United States, addressed to Mr. Paul A. Hauser, 1228 Lime Ave., Long Beach, Calif., said envelope containing then and there, a certain letter in substance as follows: [38]

“Principal Office:

City of Panama, Isthmus of Panama.

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050.

Home A 3425.

Los Angeles, June 6, 1911.

Dear Sir:

In reference to your inquiry of recent date relative to the purchase of Panama Government lands; the only possible question, we take it, that can arise in your mind as to the desirability of same, is as to whether or not, you would get good lands if the selection be left to us.

Now you can contract (through us, if desired) to have these lands cleared, planted, and all work paid for from the crop itself, it naturally follows the land must be productive, for no one would care to do this work without a return for their labor and as it is a case of “no crop no pay,” it naturally follows the land must be good land.

Does this not appear to your good sense?

Second, and *mark* this :

The Government when issuing definite title to the land certifies as to the cultivation of same. Thus, you see, there can be no question about their value,

or that the work will be carried out other than as contracted for, the Government itself certifying as to the work done.

We believe you will make a very serious mistake if you delay purchasing as much land as you possibly can. Cultivation can be delayed as long as you like, [39] as you have four years to decide as to that, but the amount of available land is limited, and when once gone, cannot be replaced.

If you leave the selection of this land to us, and are dissatisfied with your purchase, we will return the full amount paid at any time within two years on assignment to us of the provisional title.

No amount of vain regrets on your part can ever bring back a lost opportunity, and our advice is to act this very day, filing your application with us, and from the moment in our hands, will establish your ownership against all others.

If convenient to make the initial payment of \$2.50 per acre, we will do all we can to aid you in deferring payment, but act to-day. This is likely to prove the most important event in your life, and one which will mean more to your future than any single act you can name.

Yours very truly,

PANAMA DEVELOPMENT COMPANY,

By L. R. SMITH.

LRS/CS."

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

FIFTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter mentioned, the Panama Development Company (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control, charge and management of John Grant Lyman *alias* John G. Lyman (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their money and property, in and by inducing, by false and fraudulent representations, said persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring [41] such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Panamanian Government), in the purchase of lands belonging to said Panamanian Government (said lands being hereinafter referred to as said Government

lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant, at the time of devising and intending to devise said scheme and artifice to defraud, and at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said money and said property so intended to be secured and converted to the use of said defendant, being to the Grand Jurors unknown. [42]

That the said scheme and artifice to defraud so devised and intended to be devised by said defendant as aforesaid, is duly set forth and described and explained in the first count of this indictment, commencing on page three (3) thereof with the words "that he, the said defendant, intended to and would," and continuing through pages three (3), four (4), five (5), six (6), seven (7), eight (8) and nine (9), of this indictment, and ending on page nine (9) of this indictment with the words "would con-

vert to the use and benefit of himself and to the use and benefit of said corporation, such money and property," and the said first count and the said part described, is hereby referred to for a full and complete description, statement and explanation of said scheme and artifice to defraud, and the same is made a part of this count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as aforesaid, did, on the 11th day of July, in the year of our Lord one thousand nine hundred and eleven, at the [43] city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully, and wilfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, within the Southern District of California, a certain letter to be sent and delivered by said postoffice establishment of the United States, which said letter is in substance as follows:

“Principal Office:

City of Panama, Isthmus of Panama.

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050

Home A 3435

Los Angeles, July 11, 1911.

Mr. Michael Werner,

1208 C Street,

San Diego, California.

Dear Sir: [44]

Replying to your letter of the 10th instant, we beg to state that your application for Panama Government lands has been duly forwarded to Panama, and as the Provisional Title will be registered in your name, it will be necessary for you to receive same and endorse over to the purchaser before we can do anything with it.

As soon as it is received, we will take the matter up for you.

Yours very truly,

PANAMA DEVELOPMENT COMPANY.

By L. R. SMITH.

McD.”

Contrary to the form of the Statutes of the United

States in such case made and provided, and against the peace and dignity of the said United States. [45]

Sixth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That on the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, and at all times in this indictment hereinafter mentioned, the Panama Development Company (hereinafter referred to as said corporation), was a corporation organized under the laws of Arizona, and was at all the said times under the full and complete control, charge and management of John Grant Lyman *alias* John G. Lyman (hereinafter referred to as said defendant).

That on or about the 1st day of May, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern District of California, said defendant had devised and intended to devise, a scheme and artifice to defraud divers persons whose names are unknown to said Grand Jurors, out of their money and property in and by inducing, by false and fraudulent representations, said persons so intended to be defrauded, to pay and transfer to the said corporation such money and property, in the belief, by reason of said false representations, that they, the said persons so intended to be defrauded, were paying and transferring [46] such money and property to the said corporation as agent for the Republic of Panama (hereinafter referred to as the Pana-

manian Government), in the purchase of lands belonging to said Panamanian Government, (said lands being hereinafter referred to as said Government lands, and being hereinafter more fully described), through said corporation as said agent for said Panamanian Government for the sale of said Government lands, the said defendant, at the time of devising and intending to devise, and at all times in this indictment mentioned, well knowing and intending that said persons so intended to be defrauded as aforesaid, were not purchasing and would not purchase said Government lands through said corporation as agent aforesaid, and that said corporation was not and would not be the agent of said Panamanian Government for the sale of said Government lands, and said defendant at all times in this indictment mentioned, intending to secure and convert to the use of said corporation and to the use of said defendant, a large part of said money and property, the exact amount of said money and property so intended to be secured and converted to the use of said corporation, and the exact amount of said money and said property so intended to be secured and converted to the use of said defendant, being to the Grand Jurors unknown. [47]

That said scheme and artifice to defraud so devised and intended to be devised by said defendant, is fully set forth and described and explained in the first count of this indictment, and said first count is hereby referred to for a full and particular description, statement and explanation of said scheme and

artifice to defraud, and the same is hereby made a part hereof.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That he, the said defendant, John Grant Lyman *alias* John G. Lyman, having devised and intending to devise said scheme and artifice to defraud as aforesaid, did, on the 25th day of August, in the year of our Lord one thousand nine hundred and eleven, at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, knowingly, unlawfully and wilfully place and cause to be placed in the postoffice of the United States in the said city of Los Angeles, within the Southern District of California, a certain letter to be sent and delivered by said postoffice establishment of the United States, which said letter is in [48] substance as follows:

“Principal Office:

City of Panama, Isthmus of Panama.

Surcusal:

City of David, Province of Chiriqui.

President:

Sr. Hernan de la Guardia.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets.

Telephones:

Broadway 1050.

Home A 3425.

Los Angeles, August 25, 1911.

Mr. Thomas O'Rourke,

Box 51, R. F. D.,

San Fernando, Calif.

Dear Sir:—

Replying to your favor of the 23d instant, will say that we will endeavor to accommodate you, and if you will bring in your shares of Los Angeles Investment Company's Stock, together with the Deed to your lot, we will take the matter up with you at once on the lines suggested by you, so that you may take care of your payments, and get the clothes as desired, and believe that your Panama Lands are going to prove very, very profitable.

You will be interested to learn that Mr. Smith has gone to Panama, and you will likely hear from him in about four weeks time.

Please let us know what time next Saturday will be convenient for you to call at this office. [49]

Very truly yours,

PANAMA DEVELOPMENT COMPANY.

By GEO. M. BYRD."

L/C.

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER,

United States Attorney.

EDWARD A. REGAN,

Assistant United States Attorney.

[Endorsed]: No. 672-Crim. United States District Court, Southern District of California, South-

ern Division. The United States of America vs. John Grant Lyman *alias* John G. Lyman. Indictment for Viol. sec. 215, Penal Code of 1910. Using mails in execution of a scheme to defraud. A True Bill. F. M. Coulter, Foreman. Presented and filed in open court, this 27th day of September, A. D. 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Albert Schoonover, United States Attorney.
[50]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant.

Demurrer to Indictment.

Comes now the defendant, John Grant Lyman, by his attorney, Paul W. Schenck, and having heard the indictment, says that said indictment and the matters therein contained in the manner and form as the same are therein stated and set forth, are not sufficient in law, and that he, the John Grant Lyman, is not bound by law of the land to answer the same, and this he is ready to verify, and he especially demurs and objects to the said indictment and the matters therein contained on the following grounds:

I.

That the said indictment does not state facts suffi-

cient to constitute a public offense.

II.

That the first count of the said indictment does not state facts sufficient to constitute a public offense.

III.

That the second count of the said indictment does not state facts sufficient to constitute a public offense.

IV.

That the third count of the said indictment does not state facts sufficient to constitute a public offense.

V.

That the fourth count of the said indictment does not [51] state facts sufficient to constitute a public offense.

VI.

That the 5th count of the said indictment does not state facts sufficient to constitute a public offense.

VII.

That the sixth count of the said indictment does not state facts sufficient to constitute a public offense.

VIII.

That the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

IX.

That the first count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

X.

That the second count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

XI.

That the third count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

XII.

That the fourth count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever. [52]

XIII.

That the fifth count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

XIV.

That the sixth count of the said indictment does not set forth facts sufficient to charge this defendant with the commission of any offense against the laws of the United States, or against any law or laws whatsoever.

XV.

That the first count of the said indictment charges

or attempts to charge more than one offense, to wit: It charges or attempts to charge the offense of devising and intending to devise an artifice and scheme to defraud, and it charges or attempts to charge the offense of devising and intending to devise an artifice and scheme to obtain money and property by false and fraudulent representations and pretenses.

XVI.

That the second count of the said indictment charges or attempts to charge more than one offense, in the same particulars as above set forth as to the first count thereof.

XVII.

That the third count of the said indictment charges or attempts to charge more than one offense, in the same particulars as above set forth as to the first count thereof.

XVIII.

That the fourth count of the said indictment charges or attempts to charge more than one offense, in the same particulars as above set forth as to the first count thereof.

XIX.

That the fifth count of the said indictment charges or [53] attempts to charge more than one offense, in the same particulars as above set forth as to the first count thereof.

XX.

That the sixth count of the said indictment charges or attempts to charge more than one offense, in the same particulars as above set forth as to the first count thereof.

XXI.

That the said indictment is not direct or certain as to the offense charged.

XXII.

That the said indictment does not, nor does any count thereof, contain a statement of the acts constituting the offense in ordinary and concise language, or in such a manner as to enable a person of common understanding to know what is intended.

XXIII.

And the defendant specially demurs and objects to Count Number 1 of said indictment on the following grounds, to wit: That the said indictment is uncertain in that it cannot be ascertained from said count or from said indictment as a whole,

A. Whether it is sought to charge that the defendant devised or only intended to devise the artifice and scheme sought to be alleged.

B. Whether it is intended to charge that the defendant devised and intended to devise an artifice and scheme to defraud, or, an artifice and scheme to obtain money and property by false and fraudulent representations, pretenses and promises.

C. Whether it is intended to charge that the defendant did actually make the alleged false and fraudulent representations and pretenses, or only intended to make the same, and if actually made, when, how and to whom.

D. How or in what manner the alleged letter set forth in said count could or might be in execution of any such alleged [54] artifice or scheme as set forth in said count.

E. Who the persons were the defendant, as it is alleged, intended to defraud, or specifically, of what money or property it was intended to defraud them.

F. What part of the allegations therein contained are intended to set forth an alleged artifice or scheme to defraud or obtain money or property under false and fraudulent representations and pretenses, and what part of the allegations thereof are intended as charges of matters of fact.

XXIV.

And the defendant specially demurs and objects to Count Number 2 of said indictment on the following grounds, to wit: That the said count is uncertain in the same particulars as above specified as uncertainty as to Count Number 1.

XXV.

And the defendant specially demurs and objects to Count Number 3 of said indictment on the following grounds, to wit: That the said count is uncertain in the same particulars as above specified as uncertainty as to Count Number 1.

XXVI.

And the defendant specially demurs and objects to Count Number 4 of said indictment on the following grounds, to wit: That the said count is uncertain in the same particulars as above specified as uncertainty as to Count Number 1.

XXVII.

And the defendant specially demurs and objects to Count Number 5 of said indictment on the following grounds, to wit: That the said count is uncertain in the same particulars as above specified as uncer-

tainty as to Count Number 1.

XXVIII.

And the defendant specially demurs and objects to Count Number 6 of said indictment on the following grounds, to wit: [55]. That the said count is uncertain in the same particulars as above specified as uncertainty as to Count Number 1.

PAUL W. SCHENCK,
Attorney for Defendant.

[Endorsed]: 672—Crim. In the District Court of the United States, in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John Grant Lyman, Defendant. Filed October 6, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Demurrer. Recd. copy of within Oct. 6, 1913. Edward A. Regan, Special Ass't. Atty. Genl., Attorney for *Defendant*. Paul W. Schenck, Criminal Law, Los Angeles, California, 622 Laughlin Bldg. [56]

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the 6th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

**Copy Order Overruling Demurrer and the Plea of
Deft.**

This cause coming on now, at the hour of 11:35 o'clock A. M., for the entry of defendant's plea; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and a demurrer to the indictment having been interposed; and said demurrer having been argued, in support thereof, by Paul Schenck, Esq., of counsel for defendant, and in opposition thereto by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney General; and said cause having been submitted to the Court for its consideration and decision on said demurrer to the indictment and the argument thereof; it is now by the Court ordered that defendant's said demurrer to the indictment be, and the same hereby is overruled; and defendant having been required to plead to said indictment, and having pleaded not guilty as charged therein, which plea is now by order of the Court entered herein; it is thereupon, by consent of both parties, by their solicitors of record, ordered that said cause be, and the same hereby is set down

for trial before the Court and a jury to be impaneled therein on Tuesday, the 14th day of October, 1913, at 10:30 o'clock A. M. Defendant is remanded to the custody of the U. S. Marshal. [57]

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 16th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

Minutes of Trial—October 16, 1913.

This cause coming on this day to be tried before the Court and a jury to be impaneled; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings and acting as such; and both sides hav-

ing answered ready; and the Court having ordered that the trial proceed, and that a jury be impaneled herein; now, on motion of Paul Schenck, Esq., of counsel for defendant, the rule as to witnesses having been invoked during the impanelment of the jury, it is ordered that all witnesses in this cause except Postoffice Inspectors Raymond Gray and C. E. Webster be excluded from the courtroom during the impanelment of the jury in this cause; and the following twelve (12) term trial jurors having been duly drawn, called and sworn on *voir dire*, to wit: D. J. Brownstein, James Dodson, Chas. Plant, Henry T. Fuller, Stacy Tantum, R. Edwin Ibbetson, [58] H. J. Shoulters, S. M. Goddard, Charles Dreyfus, John F. Salyer, John M. Lydston and R. R. Briggs; and Edward A. Regan, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, having made a statement to the jurors of the nature of this cause; and said jurors in the box having been examined by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States, and by Paul Schenck, Esq., of counsel for defendant; and Henry T. Fuller having been challenged for cause by defendant, which challenge is allowed by the Court and the juror excused; and the remaining eleven jurors in the box having been further examined by counsel for the Government and passed for cause by the Government, and having been further examined by counsel for defendant; and Geo. P. McLain, a term trial juror, having been duly drawn,

called, sworn on *voir dire* and examined by counsel for the Government and by counsel for defendant and passed for cause; and John F. Salyer having been challenged for cause by defendant, which challenge is allowed by the Court and the juror excused; and the Court having duly admonished the eleven jurors now in the box and the remaining jurors of the panel that, during the recess of the Court, they are not to permit other persons to talk to them, nor themselves talk to other persons, about this case or anything connected with this case; it is thereupon ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial, until which time the jurors in the box and the remaining jurors of the panel are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.) [59]

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time for the further trial of defendant before the Court and a jury now being impaneled; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody

of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; N. H. Peterson being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the eleven (11) jurors now in the box having been called and all being present; and the Court having ordered that the trial proceed; and Jacob A. Bunn, a term trial juror, having been duly drawn, called and sworn on *voir dire* in the place of John F. Salyer, challenged for cause by defendant and excused at the morning session of the Court, and said juror having been examined by counsel for the Government and passed for cause; and the twelve jurors now in the box having been further examined by counsel for defendant and passed for cause; and Chas. Plant having been challenged peremptorily by the Government and excused; and Frederick D. Colby, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and Geo. P. McLain, having been challenged peremptorily by defendant and excused; and W. C. Brode, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and Jacob A. Bunn, having been challenged peremptorily by [60] the Government and excused; and Clarence C. Smith, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and Stacy Tantum having been challenged peremptorily by defendant and excused;

and E. H. Dalton, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and John M. Lydson having been challenged peremptorily by the Government and excused; and Burton W. Smith, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and H. J. Shoulters having been challenged peremptorily by defendant and excused; and Oscar Doolittle, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and E. H. Dalton having been challenged peremptorily by the Government and excused; and Wilton B. Simmons, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and W. C. Brode having been challenged peremptorily by defendant and excused; and W. N. Wells, a term trial juror, having been duly drawn and called, and having thereupon been excused by consent of counsel for both sides; and J. Frank Burns, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by counsel for the Government and by counsel for defendant and passed for cause; and Clarence C. Smith having been challenged peremptorily by defendant and excused; and L. C. Lohman, a term trial juror, having been duly drawn, called, sworn on *voir dire*, examined by

counsel for the Government and by counsel for defendant and [61] passed for cause; and the twelve jurors now in the box having been accepted by counsel for both sides and duly sworn in a body as the jury to try this cause, said jury as so impaneled and sworn consisting of the following twelve jurors, to wit:

JURY:

- | | |
|------------------------|----------------------|
| 1. D. J. Brownstein, | 7. Oscar Doolittle, |
| 2. James Dodson, | 8. S. M. Goddard, |
| 3. Frederick D. Colby, | 9. Charles Dreyfus, |
| 4. Frank Burns, | 10. L. C. Lohman, |
| 5. Wilton B. Simmons, | 11. Burton W. Smith, |
| 6. R. Edwin Ibbetson, | 12. R. R. Briggs; |

—and the first count of the indictment having been read to the jury, and the remaining second, third, fourth, fifth and sixth counts of the indictment having been stated in substance to the jury and the letters contained in said second, third, fourth, fifth and sixth counts read to the jury (pursuant to the stipulation of counsel for both sides in open court); and defendant's plea of not guilty having been stated to the jury by the clerk; and the jury having been admonished by the Court that, during the progress of this trial, they are not to permit other persons to talk with them about this case or anything connected with this case, nor themselves talk to other persons about this case or anything connected therewith, and that, until said case is finally given them for consideration, under the instructions of the Court, they are not to talk with each other about this case or anything connected with this case; and Court, at the

hour of 3:43 o'clock P. M., having taken a recess for 10 minutes; and now at the hour of 3:53 o'clock P. M., Court having reconvened; and counsel, defendant and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States, having made a statement to the jury of what the Government expects to prove; and Paul Schenck, Esq., of counsel for defendant, having invoked the rule as to witnesses (with the exception of the two Postoffice Inspectors), it is ordered that all witnesses in this case except Postoffice [62] Inspectors Raymond Gray and C. E. Webster be, and they hereby are excluded from the courtroom during the trial of this case, except when they are necessarily present for the purpose of giving their testimony; and Celora M. Stoddard having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the Court having given the jury the usual admonition; it is, at the hour of 4:30 o'clock P. M., by the Court ordered that this cause be, and the same hereby is continued until Friday, the 17th day of October, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 17, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 17th day of October, in the year of our Lord, one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and I. Benjamin and N. H. Peterson having been sworn as shorthand reporters of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Celora M. [63] Stoddard, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testi-

mony; and, in connection with the testimony of said witness the Government having offered for identification the following exhibits, which are for identification marked with the following exhibit numbers, to wit: U. S. Ex. 1, Letter of April 19, 1911, from J. G. Lyman, addressed to Stoddard Incorporating Co.; U. S. Ex. 2, Letter of April 21, 1911, from Celora M. Stoddard, addressed to Mr. J. G. Lyman; U. S. Ex. 3, Letter of April 28, 1911, from John G. Lyman, addressed to Stoddard Incorporating Co.; U. S. Ex. 4, Letter of May 26, 1911, from Panama Development Co., addressed to Stoddard Incorporating Trust Co.; U. S. Ex. 5, Letter of July 24, 1911, from Panama Development Co., addressed to Stoddard Incorporating Co.; U. S. Ex. 6, Letter of July 26, 1911, from Celora M. Stoddard, addressed to Panama Development Co.; and U. S. Ex. 7, Letter of August 9, 1911, from Panama Development Co., addressed to Stoddard Incorporating Co.; and John Redpath having been called and sworn as a witness on behalf of the United States and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, heretobefore offered and marked for identification, which are admitted in evidence on behalf of the United States, to wit: U. S. Ex. 1, Letter of April 19, 1911, from J. G. Lyman, addressed to Stoddard Incorporating Co.; U. S. Ex. 2, Letter of April 21, 1911, from Celora M. Stoddard, addressed to Mr. J. G. Lyman; U. S. Ex. 3, Letter of April 28, 1911, from John G. Lyman, addressed to Stoddard Incorporating Co.; U. S. Ex. 5,

Letter of July 24, 1911, from Panama Development Co., addressed to Stoddard Incorporating Co.; and U. S. Ex. 6, Letter of July 26, 1911, from Celora M. Stoddard, addressed to Panama Development Co.; and the Government having offered a certified copy of Articles of Incorporation of Panama Development Company, which is admitted in evidence as U. S. Ex. 8, and Celora M. Stoddard, a witness on behalf [64] of the United States, having been recalled for further examination, and having given his testimony; and the court, at the hour of 11:30 o'clock A. M., having taken a recess for 8 minutes; and now, at the hour of 11:38 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present as before; *and the roll of the jury having been called, and all being present*; and Hernan de la Guardia having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 9, Letter of March 30, 1911, from John G. Lyman, addressed to Hernan de la Guardia; U. S. Ex. 10, Letter of April 8, 1911, from John G. Lyman, addressed to Señor Hernan de la Guardia; U. S. Ex. 11, Letter of April 14, 1911, from John G. Lyman, addressed to Señor Hernan de la Guardia; U. S. Ex. 12, Letter of April 15, 1911, from John G. Lyman, addressed to Señor Hernan de la Guardia; U. S. Ex. 13, Map of the Re-

public of Panama; and U. S. Ex. 14, Letter of April 20, 1911, from John G. Lyman, addressed to Señor de la Guardia; and counsel for the respective parties having stipulated in open court that the contents of all documentary evidence admitted in evidence but not read may be copied by the shorthand reporter into his transcript of the proceedings of the trial, it is, on motion and by consent, ordered that said shorthand reporter may withdraw temporarily all exhibits admitted in evidence in this case for the purpose of so copying them into the record; and court, at the hour of 12:25 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M. of this day.

And now, at the hour of 2 o'clock P. M., the court having reconvened; and the defendant, counsel and the shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a witness on behalf of the United States, having resumed the stand for [65] further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 15, Letter of May 2, 1911, from Lyman, addressed to Señor Hernan de la Guardia; U. S. Ex. 16, Telegram of Apr. 28, 1911; U. S. Ex. 17, Letter of May 11, 1911, from John G. Lyman, addressed to Señor de la Guardia; U. S. Ex. 18, Letter of May 16, 1911, from John G. Lyman, addressed to Señor de la Guardia; U. S. Ex. 19, Letter of May 16, 1911, from John G.

Lyman, addressed to Señor de la Guardia; U. S. Ex. No. 20, Letter of May 16, 1911, H. de la Guardia to Dr. John G. Lyman; U S Ex 21, Letter of May 27, 1911, from Lyman, addressed to Mr. Hernan de la Guardia; U. S. Ex. 22, Letter of May 31, 1911, from Lyman, addressed to Mr. Hernan de la Guardia; U. S. Ex. 23, Letter of June 15, 1911, from H de la Guardia, addressed to Mr. E. A. Lynn; U. S. Ex. 24, Letter of June 21, 1911, from H. de la Guardia, addressed to E. A. Lynn; U. S. Ex. 25, Letter of June 23, 1911, from Panama Development Co., addressed to Hernan de la Guardia, also a slip attached to said letter; U. S. Ex. 26, Letter of June 23, 1911, from Panama Development Co., addressed to Hernan de la Guardia; U. S. Ex. 27, Letter of June 23, 1911, from Panama Development Co., addressed to Hernan de la Guardia; U. S. Ex. 28, Letter of July 5, 1911, from Panama Development Co. to Mr. Hernan de la Guardia; U. S. Ex. 29, Letter of July 10, 1911, from Panama Development Co. to Hernan de la Guardia; U. S. Ex. 30, Letter of July 11, 1911, from Panama Development Co. to Hernan de la Guardia; U. S. Ex. 31, Letter of July 12, 1911, from H. de la Guardia, addressed to Mr. John G. Lyman; and court, at the hour of 3:32 o'clock P. M., having taken a recess for 16 minutes; and now, at the hour of 3:48 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; [66] and Hernan de la Guardia, a witness on behalf of the United States, being on the stand for further examination,

and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 32, Letter of July 18, 1911, from Lyman, addressed to Sr. Hernan de la Guardia; U. S. Ex. 33, Letter of July 25, 1911, from Lyman, addressed to Sr. Hernan de la Guardia; and U. S. Ex. 34, Letter of July 31, 1911, from H. de la Guardia, addressed to Panama Development Co.; now, at the hour of 4 o'clock P. M., it is ordered that this cause be passed temporarily for further trial, to enable the Court to receive a partial report of the U. S. Grand Jury, this cause to be called again for further trial immediately after receiving of said report of the grand jury and the entry of the orders connected therewith or occasioned thereby.

(At 4:05 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on now, at the hour of 4:05 o'clock P. M., to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal,

with his counsel, Paul Schenck, Esq., N. H. Peterson being present as shorthand reporter of the testimony and proceedings, and acting as such; and Hernan de la Guardia, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the [67] Government having offered the following exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 35, Letter of July 29, 1911, from John G. Lyman, addressed to Mr. Hernan de la Guardia; and the Government, in connection with the testimony of said witness having offered for identification Contract No. 13, which is for identification marked with the following exhibit number, to wit: U. S. Ex. 36; and the jury having been given the usual admonition by the Court, it is, at the hour of 4:30 o'clock P. M., ordered that said cause be, and the same hereby is, continued until Tuesday, the 21st day of October, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 21, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 21st day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin and N. H. Peterson being present as shorthand reporters of the testimony and proceedings; and the roll of the jury having been called on the [68] call of the entire panel of term trial jurors, and all being present; and a question of law concerning the admission of certain documentary evidence having been argued, on behalf of defendant, by Paul Schenck, Esq., of counsel for defendant; and the jury, at the hour of 11:06 o'clock A. M., having been excused until the hour of 2 o'clock P. M., of this day; and said question of law concerning the admission of certain documentary evidence having been further argued by Paul Schenck, Esq., of counsel for defendant; and court, at the hour of 11:28 o'clock A. M., having taken a recess for 10 minutes; and now, at the hour of 11:38 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporters being present as before; and said question of law concerning the admission

of certain documentary evidence having been further argued, on behalf of defendant, by Paul Schenck, Esq., of counsel for defendant, and on behalf of the Government by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and court, at the hour of 12:15 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M., of this day.

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and the shorthand reporters being present as at the morning session of court; and the roll of the jury having been called, and all being present; and said question of law concerning the admission of certain documentary evidence having been further argued, on behalf of the Government, by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; it is, at the hour of 2:20 o'clock P. M., ordered that this cause be, and the same hereby is passed temporarily for further trial, to enable the Court to receive a partial report of the U. S. Grand Jury, this cause to be called again for further trial immediately after the receiving of said partial [69] report and the entry of the orders connected therewith and occasioned thereby.

(At 2:22 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on now, at the hour of 2:22 o'clock P. M., for further trial before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., the shorthand reporters being present as before; and the jurors in this case, who did not leave their seats, each and all being present; and a question of law concerning the admission of certain documentary evidence having been further argued, on behalf of the United States by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, and on behalf of defendant by Paul Schenck, Esq., of counsel for defendant; and W. I. Madeira having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 37, Letter of July 26, 1911, from Santiago de la Guardia, addressed to Senor E.

A. Lynn, and translation of the same; and U. S. Ex. 38, Letter of Aug. 12, 1911, from John G. Lyman, addressed to Mr. Hernan de la Guradia; and M. de Haaf having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 3:30 [70] o'clock P. M., having taken a recess for 8 minutes; and now, at the hour of 3:38 o'clock P. M., court having reconvened; and defendant and counsel being present as before; N. H. Peterson being present as shorthand reporter of the testimony and proceedings, and the roll of the jury having been called, and all being present; and M. De Haff, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits which are admitted in evidence in its behalf, to wit: U. S. Ex. 39-A, small plate of Republic of Panama; U. S. Ex. 39-B, Colored Plate; U. S. Ex. 39-C, Colored Plate; U. S. Ex. 39-D, Colored Plate; U. S. Ex. 40, Map of Republic of Panama; U. S. Ex. 41, plate of drawing of U. S. Ex. 40; U. S. Ex. 41-A, Color Plate; U. S. Ex. 41-B, Color Plate; U. S. Ex. 41-C, Color Plate; U. S. Ex. 41-D, Color Plate; U. S. Ex. 42, twenty half tones; U. S. Ex. 41-E, Plate of Railroad; and Clarence E. Riley having been called and sworn as a witness on behalf of the United States, and having given his testimony; it is at the hour of 4:32 o'clock P. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 22d day of October, 1913, at 10:30

o'clock A. M., for further trial until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [71]

Minutes of Trial—October 22, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Wednesday, the 22d day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and C. E. Riley, a witness on behalf of the United States,

having resumed the stand for further examination, and having given his testimony; and, F. F. Green having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 43, Map Agua Dulce Colony, Province of Cocle, Panama; and the Government having offered for identification a Plate, Agua Dulce Colony, Province of Cocle, Panama, which is for identification marked U. S. Ex. 44; and Ralph Garnier having been called and sworn as a witness on behalf of the United States, and having given his testimony and [72] now, by consent, U. S. Ex. 43, heretofore admitted in evidence, having been withdrawn and the mark of its filing stricken out, and said exhibit having been marked for identification U. S. Ex. 43, being Map of Agua Dulce Colony, Province of Cocle, Panama; and Richard C. Pendlant having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 11:30 o'clock A. M., having taken a recess for 10 minutes; and now, at the hour of 11:40 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called and all being present; and T. P. Smith having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in

evidence in its behalf, to wit: U. S. Ex. 45, Circular, "The Gateway to Opportunity"; U. S. Ex. 46, Panama Development Company, Land Agreement; and U. S. Ex. 47, Letter head of Panama Development Company; and U. S. Ex. 48, Pamphlet, Panama Development Company; and court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as at the morning session of court; and the roll of the jury having been called, and all being present except juror James Dodson, who comes in later; and T. P. Smith, a witness, on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 49, Application for land; U. S. Ex. 50, Copy proof and [73] folder directed to "Mr. Careful Man"; and, also in connection with the testimony of said witness, the Government having offered for identification a copy, first and second proofs and folder of Panama Sugar Estates Limited; and, also in connection with the testimony of said witness, the Government having offered the following exhibit, which are admitted in evidence in its behalf, to wit: U. S. Ex. 52, Two letter-heads, Panama Development Company; U. S. Ex. 53, Letter-head, Panama Development Company, in different color; U. S. Ex. 54A, Pink Folder, "Panama Lands";

U. S. Ex. 54B, Copy "Panama Lands"; U. S. Ex. 54C, Proof, "Panama Lands"; U. S. Ex. 54D, Dummy; U. S. Ex. 55A, Folder, "Panama"; U. S. Ex. 55B, Dummy; U. S. Ex. 55C, Press proof; U. S. Ex. 56, Print, Agua Dulce Colony; U. S. Ex. 57, Black and white proof of U. S. Ex. 41; U. S. Ex. 58, Colored finished product of U. S. Ex. 41; U. S. Ex. 59, Colored finished product of U. S. Ex. 41 and other plates; and court, at the hour of 3:38 o'clock P. M., having taken a recess for 12 minutes; and now, at the hour of 3:50 o'clock, P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and T. P. Smith, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 60, Map of the Republic of Panama; U. S. Ex. 61, Letter of July 12, 1911, from L. R. Smith, addressed to Segnogram Press; U. S. Ex. 62, Pamphlet, "Timber Resources of Panama"; U. S. Ex. 63, Circular, "To Prospective Buyers of Timber Lands"; U. S. Ex. 64, Letter to Segnogram Press, dated July 19, 1911; and U. S. Ex. 65, Application for land; it is, at the hour of 4:30 o'clock P. M. ordered that said cause be, and the same hereby is continued until Thursday, the 23d day of October, 1913, at 10:30 o'clock A. M. for further trial, until which time the jury are excused. Defendant is [74] remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 23, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 23d day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs.

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin, being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Ralph L. Garnier, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and T. P. Smith, a witness on behalf of the United States having been

recalled for further examination, and having given his testimony; and, in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 66-A, "Agreement"; U. S. Ex. 66-B, Copy of "Agreement"; U. S. Ex. 67, Letter of Aug. 2, 1911, to Segnogram Press; U. S. Ex. 68-A, Folder, "The Gateway to Opportunity"; U. S. Ex. [75] 68-B, Copy, "The Gateway to Opportunity"; and U. S. Ex. 69, being *being* checks bearing following numbers and in amounts as follows, to wit: #133, for \$300; #177, for \$140.10; #178, for \$28.80; #218, for \$137.50; #248, for \$282.80; #279, for *for* \$269.50; #325, for \$180.70; #356, for \$269.50; and court, at the hour of 11:42 o'clock A. M. having taken a recess for 6 minutes; and now, at the hour of 11:48 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and T. P. Smith, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with said testimony, defendant having offered a pamphlet, which is admitted in evidence in his behalf as Defts. Ex. A; and John Redpath, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and court having thereupon, at the hour of 12:30 o'clock P. M., taken a recess until the hour of 2 o'clock P. M. of this day;

And now, the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand

reporter being present as at the morning session of the court; and the roll of the jury having been called, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, *and* in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence [76] in its behalf, to wit: U. S. Ex. 43 (heretofore offered and so marked for identification), Map, Ague Dulce Colony, Province of Cocle, Panama, U. S. Ex. 70, Letter of May 27, 1911, to Security Savings Bank; and U. S. Ex. 71, Stock Book and eight certificates; and, also in connection with said testimony, the Government having offered for identification a Report from Bradstreet's, which is for identification marked U. S. Ex. 72, and, also in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 73, Letter of May 27, 1911, to R. G. Dun & Co.; and U. S. Ex. 74, Minute Book of Board of Directors and Record of Minutes of Aug. 21, 1911, on letter-head; and court, at the hour of 3:35 o'clock P. M., having taken a recess for 7 minutes; and now, at the hour of 3:42 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Redpath a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with said testimony, the Government having offered

the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 75, Promissory Note of Aug. 16, 1911; U. S. Ex. 76, Letter of June 3, 1911, to Manager, Los Angeles Stock Exchange; U. S. Ex. 4 (heretofore offered for identification and so marked), Letter of May 26th, 1911, to Stoddard Incorporating Trust Co.; U. S. Ex. 7 (heretofore offered for identification and so marked), Letter of August 9, 1911, to Stoddard Incorporating Co.; and U. S. Ex. 51 (heretofore offered for identification and so marked), Copy, first and second proofs, and folder of Panama Sugar Estates Limited; and the court having given the jury the usual admonition; it is, at the hour of 4:33 o'clock P. M., [77] ordered that this cause be, and the same hereby is continued until Tuesday, the 28th day of October, 1913, at 10:30 o'clock A. M., for further trial, until which time the jury are excused. Defendant is remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 28, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 28th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin, being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, in connection with the call of the roll of the entire panel of term trial jurors, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 77, Deed to Lot 285, Edendale Tract, signed Elizabeth Leach; U. S. Ex. 78, Land Agreement between Elizabeth Leach and Panama Development Co.; U. S. Ex. 79, Agreement between [78] Elizabeth Leach and Panama Development Co.; U. S. Ex. 80, Mortgage on Lot 285 Edendale Tract; U. S. Ex. 81, Land Agreement between Francis Haldeman and Panama Development

Co.; and U. S. Ex. 82, Cultivation agreement between Francis Haldeman and Panama Development Co.; and, also in connection with said testimony, the Government having offered for identification a Mortgage of Riverside acreage signed by Francis Haldeman, which is for identification marked U. S. Ex. 83; and, also in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 84, Deed of Riverside land to John G. Lyman, signed Panama Development Co., U. S. Ex. 83 (heretofore offered for identification and so marked), Mortgage of Riverside Land, signed Francis Haldeman; and U. S. Ex. 85, Employment Contract between Panama Development Co. and E. D. Ryan; and, also in connection with said testimony, the Government having offered for identification a copy of letter to John Redpath, dated Aug. 25, 1913, which is for identification marked U. S. Ex. 86; and court, at the hour of 11:30 o'clock A. M., having taken a recess for 10 minutes and now, at the hour of 11:40 o'clock A. M., court having reconvened; and counsel, defendant and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 87, Telegram of Aug. 30, 1911, Jno. [79] G. Lyman to Panama

Development Co.; U. S. Ex. 88, Letter of Sept. 1, 1911, signed "L," to Mr. Redpath; U. S. Ex. 89, Letter of Sept. 4, 1911, unsigned, to Mr. Redpath; U. S. Ex. 90, cablegram of Sept. 3, 1911, and translation, unsigned, to "Lygrant"; U. S. Ex. 91, cablegram and translation of Sept. 4, 1911, unsigned, to Panamano; U. S. Ex., 92, telegram of Sept. 4, 1911, "R" to J. G. Lyman; U. S. Ex. 93, telegram of Sept. 5, 1911, "L" to John Redpath; U. S. Ex. 94, cablegram and translation, of Sept. 5, 1911, unsigned, to Panamano; U. S. Ex. 95, cablegram and translation, of Sept. 5, 1911, Armel to Panamano; U. S. Ex. 96, Letter and enclosure, of Sept. 5, 1911, unsigned, to Mr. Redpath; and U. S. Ex. 97, Letter of Sept. 6, 1911, unsigned, to Mr. Redpath; and court, at the hour of 12:15 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M. of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and T. P. Smith, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said witness, defendant having offered for identification the following exhibits, which are for identification marked with the following exhibit numbers, to wit: Defts. Ex. B-1, Statement of Segnogram Press Co. with Panama Development Co., given to defendant by T. P. Smith; and Defts. Ex. B-2, Ledger account

of Panama Development Company with Segnagram Press Co.; and John Redpath, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf [80] to wit: U. S. Ex. 98, Telegram, Sept. 6, 1911, "L" to John Redpath; U. S. Ex. 99, Telegram of Sept. 6, 1911, Redpath to J. G. Lyman; U. S. Ex 100, Telegram of Sept. 6, 1911, Redpath to Lyman; U. S. Ex. 101, Telegram of Sept. 7, 1911, "L" to John Redpath; U. S. Ex. 102, Telegram of Sept. 7, 1911, Redpath to J. G. Lyman; U. S. Ex. 103, Telegram of Sept. 7, 1911, "L" to John Redpath; U. S. Ex. 104, Cablegram of Sept. 8, 1911, unsigned, to Panamano; and U. S. Ex. 105, Cablegram of Sept. 8, 1911, Smith to Lyman; and, also in connection with said testimony, the Government having offered the following exhibits, which are for identification marked with the following exhibit numbers, to wit: U. S. Ex. 106, Letter of Sept. 6, 1911, L. R. S. to Mr. R.; and U. S. Ex. 107, Letter of Sept. 13, 1911, L. R. Smith to P. D. Co.; it is now, at the hour of 3:19 o'clock P. M., ordered that this cause be, and the same hereby is passed temporarily for its further trial, to enable the Court to receive a partial report of the U. S. Grand Jury, this cause to be called again for further trial immediately after the receiving of said partial report and the entry of the orders connected therewith and occasioned thereby.

(At 3:22 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

This cause coming on now, at the hour of 3:22 o'clock P. M., to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of [81] California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and John Redpath, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered three (3) checks, which are admitted in evidence in its behalf as U. S. Ex. 108, to wit: Check No. 249, for \$1,000, drawn by Panama Development Co.; Check No. 199, for \$250, drawn by Panama Development Co.; and Check No. 426, for \$144.80, drawn by Panama Development Co.; and Court, at the hour of 3:29 o'clock P. M., having taken a recess for 9 minutes; and now, at the hour of 3:38 o'clock

P. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered certain other checks, which are admitted in evidence as part of U. S. Ex. 108 (heretofore admitted in evidence), to wit: Check No. 266, for \$200, drawn by Panama Development Co.; Check No. 146, for \$1,000, drawn by Panama Development Co.; Check No. 167, for \$100, drawn by Panama Development Co.; Check No. 352, for \$500, drawn by Panama Development Co.; Check No. 369, for \$1,000, drawn by Panama Development Co.; Check No. 372, for \$100, drawn by Panama Development Co.; Check No. 198, for \$500, drawn by Panama Development Co.; Check No. [82] 227, for \$240.74, drawn by Panama Development Co.; Check No. 462, for \$227.90, drawn by Panama Development Co.; Check No. 238, for \$300, drawn by Panama Development Co.; Check No. 135, for \$1,000, drawn by Panama Development Co.; and the Government having also offered the following exhibits, in connection with said testimony, which are admitted in evidence in its behalf, to wit: U. S. Ex. 109, Three land agreements, executed; and U. S. Ex. 110, Five additional land agreements and five powers of attorney; it is thereupon ordered that said cause be, and the same hereby is continued until Wednesday, the 29th day of October, 1913, at 10:30

o'clock A. M. Defendant is remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 29, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 29th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney, for the Southern District of California, appearing as counsel [83] for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jurors herein having been called in connection with the call of the roll of the entire

panel of term trial jurors, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and court, at the hour of 11:30 o'clock A. M., haven taken a recess for 7 minutes; and now, at the hour of 11:37 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Redpath, a witness, on behalf of the United States having been recalled for further examination, and having given his testimony; and court, at the hour of 12 o'clock M., having taken a recess until the hour of 2 o'clock P. M., of this day;

And now at the hour of 2 o'clock P. M., court having convened; and the defendant and counsel being present as before; E. S. Williams and I. Benjamin being present as shorthand reporters of the testimony and proceedings; and the roll of the jury having been called, and all being present; and John Redpath, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with said testimony, the Government having offered for identification a copy of a letter of June 2, 1911, to John Redpath, which is for identification marked U. S. Ex. 111; and Louis S. Parsons having been called and sworn as a witness on behalf of the United States, and having given his testimony, the Government having offered a copy of a letter from Louis S. Parsons to *June* Redpath, dated June 2, 1911,

(heretofore offered and marked for identification), which is admitted in evidence in its behalf as [84]. U. S. Ex. 111 and R. B. Hardacre and H. S. McKee having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 112, signature card of Panama Development Co. in National Bank of California; U. S. Ex. 113, letter copy of June 9, 1911, from cashier of National Bank of California to Panama Development Co.; and U. S. Ex. 114, Letter of June 10, 1911, John Redpath to H. C. McKee; and W. H. McKeag having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with said testimony, defendant having offered for identification a signature card of Panama Development Co.; with Park Bank, which is for identification marked Defts. Ex. C; and R. W. Watson having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 3:30 o'clock P. M., having taken a recess of 8 minutes; and now, at the hour of 3:48 o'clock P. M., court having convened; and defendant and counsel being present as before; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and R. W. Watson, a witness on behalf of the United States, having resumed the stand for further examination, and having given his

testimony; and R. B. Hardacre, a witness on behalf of the United States, having been recalled for further cross-examination, and having given his testimony; and, in connection with the testimony of said witness, defendant having offered for identification a signature card of Panama Development Co., with Security Savings Bank, which is for identification marked Defts. Ex. "D"; and Celora M. Stoddard, a witness on behalf of the United States [85] having been recalled for further examination, and having given his testimony; and in connection with the testimony of said witness, the Government having offered a certified copy of articles of incorporation of Panama Sugar Estates, Limited, which is admitted in evidence in its behalf as U. S. Ex. 115; and, also in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 116, Certified copy of Articles of Incorporation of Tropical Products Co., Limited; and U. S. Ex. 117, Amended Articles of Incorporation of Panama Development Co.; and J. J. Bradley having been called and sworn as a witness on behalf of the United States, and having given his testimony of said witness, the Government having offered a copy of letter to Bradstreets, which is admitted in evidence as U. S. Ex. 72 (the same having heretofore been offered and so marked for identification); it is, at the hour of 4:30 o'clock P. M., ordered that this cause be, and the same hereby is continued for further trial until Thursday, the 30th day of October, 1913, at 10:30 o'clock A. M., until which

time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

Minutes of Trial—October 30, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 30th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant. [86].

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and W. H. Barry and Minnie A. Cooper having respectively been called and sworn as witnesses on behalf of

the United States, and having given their testimony; and, in connection with the testimony of said last named witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 118, "copy" for multigraph letter, of June 14, signed Panama Development Co.; U. S. Ex. 119, copy of multigraph letter, of June 19, 1911, signed Panama Development Co.; U. S. Ex. 120, Copy of multigraph letter of July 3, signed Panama Development Co.; U. S. Ex. 12, copy for multigraphed Cultivation Agreement; and U. S. Ex. 122; Copy for Multigraph letter, signed Panama Development Co.; and court, at the hour of 11:39 o'clock A. M., having taken a recess for 8 minutes; and now, at the hour of 11:47 o'clock A. M., court having convened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Minnie A. Cooper, a witness on behalf of the United States having resumed the stand for further examination and having given her testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 123, copy for multigraph letter to British Investors, signed Panama Development Co.; [87] U. S. Ex. 124, copy for multigraph circular signed Panama Development Co.; U. S. Ex. 125, copy for multigraph Land Agreement signed Panama Development Co.; U. S. Ex. 126, Multigraph letter signed (stamp) "L. R. Smith"; U. S. Ex. 127, multigraph letter circular signed Panama Develop-

ment Co.; U. S. Ex. 128, copy for multigraph letter circular signed Panama Development Co.; U. S. Ex. 129, copy for multigraph letter circular to British Investors; U. S. Ex. 130, copy for multigraph letter circular of Aug. 3, signed Panama Development Co.; U. S. Ex. 131, copy for multigraph letter circular of Aug. 12, signed Panama Development Co.; U. S. Ex. 132, copy for multigraph letter circular of Aug. 18, signed Panama Development Co.; U. S. Ex. 133, copy for multigraph letter circular of Aug. 25, signed Panama Development Co.; and U. S. Ex. 134, signature cut of L. R. Smith"; and Leta Hubb having been called and sworn as a witness on behalf of the United States and having given her testimony; and court, at the hour of 12:35 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M. of this day:

And now at the hour of 2 o'clock P. M., court having re-convened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called and all being present; and Leta Hubb, a witness on behalf of the United States, having resumed the stand for further examination, and having given her testimony; and, in connection with the testimony of said witness, the United States having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 135, "Bill Jones' Soap," advertisement in Los Angeles Examiner, May 28, 1911; U. S. Ex. 136, "Panama Lands," advertisement in Los Angeles Examiner, June 4, 1911; U. S. Ex. 137, "Are You So?" advertisement in Herald, July 12, 1911; U. S. Ex. 138

“Forty-niner,” Advertisement in Los Angeles Examiner, July 22, 1911; [88] U. S. Ex. 139, “If Columbus,” advertisement in Los Angeles Examiner of July 25, 1911; U. S. Ex. 140, “Death Rate,” advertisement in Los Angeles Examiner of July 26, 1911; U. S. Ex. 141, “What Have You?” advertisement in Los Angeles Examiner of July 26, 1911; U. S. Ex. 142, “Keep Your Eye,” advertisement in Los Angeles Examiner of Aug. 9, 1911; U. S. Ex. 143, “Never in History,” advertisement in Los Angeles Examiner of Aug. 7, 1911; and U. S. Ex. 144, letter, L. R. Smith to Paul A. Hauser, of June 19, 1911; and court, at the hour of 2:32 o’clock P. M., having taken a recess for 5 minutes; and now, at the hour of 2:37 o’clock P. M., court having reconvened; and defendant, counsel and shorthand reported being present as before; and the roll of the jury having been called, and all being present; and Leta Smith, a witness on behalf of the United States, having resumed the stand for further examination and having given her testimony, and in connection with her testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 145, letter, blank signature, to Mrs. Dr. Steele, no date; U. S. Ex. 146, letter, blank signature, to O. Hellweg, of June 19, 1911; and U. S. Ex. 147, letter, L. R. Smith to Mrs. O. Hellwig, of July 10, 1911; it is, at the hour of 4:30 o’clock P. M., ordered that this cause be, and the same hereby is continued until Friday, the 31st day of October, 1913, at 10:30 o’clock A. M., for further trial, until which time the jury are excused. Defendant is remanded to the custody of the U. S. Marshal. [89]

Minutes of Trial—October 31, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 31st day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Leta Hubb, a witness on behalf of the United States, having been recalled for further cross-examination, and having given her testimony; and Court, at the hour of 11:30 o'clock

A. M., having taken a recess for 8 minutes; and now, at the hour of 11:36 o'clock A. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; it is thereupon ordered that this cause be, and the same hereby is passed temporarily to enable the Court to enter an order in another cause, this case to [90] be called again for further trial immediately after the making of said order.

(Later in the forenoon.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause having been called at this time for further trial before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the jurors all being present; and Leta Hubb, a witness on behalf of the United States, having resumed the stand for further examination, and having given her testimony; it is by the Court ordered that U. S. witnesses herein be

not discharged until Government's counsel has consulted defendant's counsel regarding the time when they shall be discharged; and Nora E. Clark having been called and sworn as a witness on behalf of the United States, and having given her testimony; and court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M., of this day.

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being [91] present as before; and the roll of the jury having been called, and all being present; and Nora E. Clark, a witness on behalf of the United States, having resumed the stand for further examination, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered certain exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 86 (heretofore offered and so marked for identification); U. S. Ex. 148, Letter of Aug. 25, 1911, Geo. M. Byrd to Thomas O'Rourke; and U. S. Ex. 149, Letter of Aug. 23, 1911, Thos. O'Rourke to "Dear Sir"; and, also in connection with the testimony of said witness, the Government having offered for identification two exhibits, which are for identification marked with the following exhibit numbers, to wit: U. S. Ex. 150, copy of Letter of Sept. 5, 1911, unsigned, to N. Campbell; and U. S. Ex. 151, Letter "L. R. Smith" to Thomas O'Rourke of July 24, 1911; and R. J. Haldeman having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the

court, at the hour of 3:45 o'clock P. M., having given the jury the usual admonition, and having excused the jurors until Tuesday, the 4th day of November, 1913, at 10:30 o'clock A. M.; and defendant, by his counsel, having requested that the court direct that leave be granted defendant to examine certain papers in the office of Edward A. Regan, Esq., Special Assistant to the Attorney General; and said request of defendant having been argued by counsel for the Government and by counsel for defendant; it is, at the hour of 4 o'clock P. M., ordered that this cause be, and the same hereby is continued for further trial and further discussion of said request of defendant until Saturday, the 1st day of November, 1913, at 10:30 o'clock A. M. [92]

Minutes of Trial—November 1, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Saturday, the 1st day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.
JOHN GRANT LYMAN,
Defendant.

This cause coming on this day for further trial and proceedings; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; the jury not being present, having heretofore been excused until Tuesday, the 4th day of November, 1913. at 10:30 o'clock A. M.; and defendant's request that by direction of the court he be granted leave to examine certain papers in the office of Edward A. Regan, Special Assistant to the U. S. Attorney for the Southern District of California, having been further argued by Paul Schenck, Esq., of counsel for defendant, and by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California of counsel for the United States; it is, at the hour of 10:47 o'clock A. M., ordered that this cause be, and the same hereby is continued until Monday, the 3d day of November, 1913, at 10:30 o'clock A. M., for further trial and proceedings. Defendant is remanded to the custody of the U. S. Marshal. [93]

Minutes of Trial—November 3, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the 3d day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further heard on defendant's request that the court direct that said defendant be granted permission to inspect the papers connected with said defendant as this case in the office of Edward A. Regan, Esq., Special Assistant to the U. S. Attorney, for the Southern District of California, and for other proceedings connected with and a part of the further trial of said cause; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; Paul Schenck, Esq., appearing as counsel for defendant; I. Benjamin being present as shorthand reporter of the proceedings; the jury not being pres-

ent, having heretofore been excused until Tuesday, the 4th day of November, 1913, at 10:30 o'clock A. M., and defendant's said request for leave to inspect certain papers having been further argued, on behalf of defendant, by Paul Schenck., Esq., of counsel for defendant, and on behalf of the Government by Edward A. Regan, Special Assistant to the U. S. Attorney or the Southern District of California, of counsel for the United States; and said cause having been temporarily passed for further hearing and proceedings; and thereafter said cause having been called again for further hearing and proceedings; counsel and shorthand reporter being present as before; and defendant now being present in custody of the U. S. Marshal; it is by the Court ordered that defendant's said request be, and the same [94] hereby is granted to this extent, namely, it is ordered that all books and papers relating to the subject matter of this case now on trial which are in the custody of said Special Assistant to the U. S. Attorney for the Southern District of California be open to the inspection of defendant and his counsel (said defendant during said inspection to remain in custody of the U. S. Marshal), from the hour of 11 o'clock A. M., of this day until the hour of 4:30 o'clock P. M., of this day. Defendant is remanded to the custody of the U. S. Marshal, and it is ordered that this cause be, and the same hereby is continued until Tuesday, the 4th day of November, 1913, at 10:30 o'clock A. M., for further trial and proceedings.

Minutes of Trial—November 4, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Tuesday, the 4th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings and acting as such; and the roll of the jury having been called, and all being present; and H. J. Haldeman, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said

witness, the Government having offered an exhibit (heretofore offered and marked for identification), which is admitted in evidence as U. S. Ex. 44; and F. T. Morrison having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 152, copy of telegram, John G. Lyman [96] to F. T. Morrison, of Sept. 6, 1911; and U. S. Ex. 153, Letter, John G. Lyman, to F. T. Morrison, of Sept. 6, 1911; and, also in connection with said testimony, the Government having offered for identification a letter, F. T. Morrison to John G. Lyman, of Sept. 7, 1911, which is for identification marked U. S. Ex. 154; and N. R. Bell having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness the Government having offered for identification a letter, "L. R. S." to N. R. Bell, of July 10, 1911, which is for identification marked U. S. Ex. 155; and, in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 156, Letter John G. Lyman to N. R. Bell, of Sept. 1, 1911; and U. S. Ex. 157; Telegram, John G. Lyman to N. R. Bell, of Sept. 1, 1911; and U. S. Ex. 158, Copy of Letter, unsigned, to N. R. Bell, of Sept. 5, 1911; and Jacob Vandegrift having been called and sworn as a witness on behalf of the United States, and having given

his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit; U. S. Ex. 159, copy telegram, John G. Lyman to Jacob Vandegrift, of Sept. 16, 1911; and U. S. Ex. 160, Letter, John G. Lyman to Jacob Vandegrift, of Sept. 6, 1911; and Raymond Gray having been called and sworn as a witness on behalf of the United States, and not having given his testimony at this time; and G. M. Byrd having been called and sworn as a witness on behalf of the United States and having given his testimony; and court having excused the jury until the hour of 2:30 o'clock P. M., of this day; it is, [97] at the hour of 12 o'clock M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time for the further trial thereof in open court; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with

his counsel, Paul Schenck, Esq.; and jury not being present in court, having heretofore been by the court excused until the hour of 2:30 o'clock P. M., of this day; I. Benjamin being present as shorthand reporter of the testimony and proceedings and acting as such; and a question of the admissibility of certain evidence having been argued, on behalf of the Government, by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, and on behalf of the defendant by Paul Schenck, Esq., of counsel for defendant; and the jury, at the hour of 3:03 o'clock P. M., having been called into court; and the roll of the jury having been called, and all being present; and B. B. Bush having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the government having offered the following exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 161, consisting of the following; Letter, B. B. Bush, to John G. Lyman of Aug. 25, 1911; copy of letter, [98] John G. Lyman to B. B. Bush of Aug. 26, 1911; copy of telegram, John G. Lyman to B. B. Bush, of Sept. 6, 1911; Telegram, B. B. Bush to John G. Lyman of Sept. 6, 1911, and copy of letter, John G. Lyman to B. B. Bush of Sept. 6, 1911; and the court, at the hour of 3:16 o'clock P. M., having excused the jury until Wednesday, the 5th day of November, 1913, at 10:30 o'clock A. M., and a question of the admissibility of certain evidence having been further argued by Paul Schenck, Esq., of counsel for defendant, on

behalf of defendant, and by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California of counsel for the United States, on behalf of the Government; it is, at the hour of 3:48 o'clock P. M., by the court ordered that this cause be, and the same hereby is continued until Wednesday, the 5th day of November, 1913, at 10:30 o'clock A. M., for further trial. Defendant is remanded to the custody of the U. S. Marshal. [99]

Minutes of Trial—November 5, 1913.

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 5th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern

District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and the jury, at the hour of 10:40 o'clock A. M., having been excused from the courtroom temporarily; and a question of the admissibility of certain evidence having been further argued, on behalf of defendant, by Paul Schenck, Esq., of counsel for defendant, and on behalf of the Government by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; it is now by the Court ordered that the objections of defendant to the introduction of said evidence be, and the same hereby are overruled; and the jury, at the hour of 11:48 o'clock A. M., having been recalled into court; and the roll of the jury having been called, and all being [100] present; and court, at the hour of 11:49 o'clock A. M., having taken a recess until the hour of 2 o'clock P. M. of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called and all being present; and G. M. Byrd, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and court, at the hour of 3:22 o'clock P. M., having taken

a recess for 13 minutes; and now, at the hour of 3:40 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and G. M. Byrd, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered for identification a Telegram, without signature, to Geo. M. Byrd, dated Sept. 4, 1911, which is for identification marked U. S. Ex. 162; and, also in connection with said testimony, defendant having offered an affidavit of G. M. Byrd, of Sept. 11, 1911, which is admitted in evidence as Defts. Ex. "E"; it is, at the hour of 4:36 o'clock P. M., ordered that this cause be, and the same hereby is continued until Thursday, the 6th day of November, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [101]

Minutes of Trial—November 6, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 6th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., and M. H. Conlee being present as shorthand reporter of the testimony and proceedings, and acting as such; and G. M. Byrd, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered an affidavit of G. M. Byrd, signed on Sept. 12, 1911, which is admitted in evidence as U. S. Ex. 163; and court, at the hour of 10:55 o'clock A. M., having taken a recess for 9 minutes; and now, at the hour of 11:04 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Earl A. R. Lynn having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the

hour of 11:54 o'clock [102] P. M., having taken a recess for 6 minutes; and now, at the hour of 12 o'clock M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; thereafter, at the hour of 12:07 o'clock P. M., it is ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M. of this day for further trial, until which time the jury are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., M. H. Conlee being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Earl A. R. Lynn, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Gov-

ernment having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 164, Letter from E. A. R. Lynn to Frederick L. Anderson, of Aug. 28, 1911; and U. S. Ex. 165, Book, "Am I Insane"; and court, at the hour of 3:31 o'clock P. M., having taken a recess for 8 minutes; and now, at the hour of 3:39 o'clock P. M., court having reconvened; and defendant, [103] counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Earl A. R. Lynn, a witness on behalf of the United States, having resumed the stand for further cross-examination, and having given his testimony; and G. L. Maynard, and Nathaniel Campbell having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with the testimony of said last-named witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 166, Letter Nathaniel Campbell to Panama Development Co., of Aug. 29, 1911; and U. S. Ex. 150 (heretofore offered and marked for identification); it is, at the hour of 4:33 o'clock P. M., ordered that this cause be, and the same hereby is continued until Friday, the 7th day of November, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [104]

Minutes of Trial—November 7, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 7th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Ralph Spofford French having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the

Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 167, copy of Letter, Panama Development Company to Ralph Spofford French, of May 26, 1911; U. S. Ex. 168, Copy of Letter, Panama Development Company to Mr. R. Spofford French, of July 21, 1911; U. S. Ex. 169, Letter, R. Spofford French to Mr. [105] Lyman, of Aug. 1, 1911; U. S. Ex. 170, copy of letter, unsigned, to R. Spofford French, of Aug. 2, 1911; U. S. Ex. 171, Letter, R. Spofford French to Panama Development Co., of Aug. 4, 1911; U. S. Ex. 172, Copy of Letter, Panama Development Co. to R. Spofford French, of Aug. 5, 1911; U. S. Ex. 173, Letter, R. Spofford French to Panama Development Company of Aug. 7, 1911; and U. S. Ex. 174, Copy of Letter, Panama Development Company to R. Spofford French, of Aug. 8, 1911; and court, at the hour of 11:35 o'clock A. M., having taken a recess for 6 minutes; and now, at the hour of 11:41 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and Ralph Spofford French, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 175, Letter, R. Spofford French to Panama Development Company of July 31, 1911; U. S. Ex. 176, Letter, R. Spofford French to Panama Development Co. of Aug. 10, 1911; and U. S. Ex. 177, Copy Letter, Panama Development

Company to R. Spofford French, of Aug. 11, 1911; and court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M. of this day;

And now, at the hour of 2 o'clock P. M., the court having reconvened; defendant and counsel being present as before; M. H. Conlee and I. Benjamin being present as shorthand reporters of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Ralph Spofford French, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 178, Letter, R. Spofford [106] French to John G. Lyman of Aug. 8, 1911; and U. S. Ex. 179, copy of letter, Panama Development Co. to R. Spofford French of Aug. 9, 1911; and, also in connection with said testimony, defendant having offered a letter, R. Spofford French to Panama Development Co. of May 29, 1911, which is admitted in evidence in his behalf as Defts. Ex. "G"; and Clinton Johnson and J. E. Wagner having been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with the testimony of said last-named witness, the Government having offered a letter, G. L. Maynard to J. E. Wagner, of July 10, 1911, which is admitted in evidence as U. S. Ex. 180; and Fred Irving Palmer having been called and sworn as a witness on behalf of

the United States, and having given his testimony; and court, at the hour of 3:30 o'clock P. M., having taken a recess for 8 minutes; and now, at the hour of 3:38 o'clock P. M., court having reconvened; and defendant and counsel being present as before; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Fred Irving Palmer, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and Raymond Gray, a witness on behalf of the United States, having been recalled for further examination and having given his testimony; and Mrs. Sadie Walden having been called and sworn as a witness on behalf of the United States, and having given her testimony; and the Court having given the jury the usual admonition; it is, at the hour of 4:11 o'clock P. M., by the Court ordered that this cause be, and the same hereby is continued until Thursday, the 13th day of November, 1913, at 10:30 o'clock A. M. Defendant is remanded to the custody of the U. S. Marshal. [107]

Minutes of Trial—November 13, 1913.

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 13th day of November, in the year

of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and the roll of the jury having been called, and all being present; and Alexander T. Murray having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 181, advertising contract of Panama Development Co.; with "Los Angeles Examiner"; U. S. Ex. 182, Coffee Plantation advertisement in "Los Angeles Examiner," August 30, 1911; and U. S. Ex. 183, "To Investors," and advertisement in "Los Angeles Examiner," Sept. 1, 1911; and Otto G. St. Oegger and Thomas O'Rourke having respectively been called and sworn as witnesses on behalf of the United

States, and having given their testimony; and, in connection with the [108] testimony of the last-named witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 184, Letter, L. R. Smith to Thomas O'Rourke, of June 20, 1911; U. S. Ex. 185-A, Letter, L. R. Smith to Thomas O'Rourke of June 24, 1911; U. S. Ex. 185-B, Application blank for Panama Land; U. S. Ex. 186-A, Letter, L. R. Smith to Thomas O'Rourke, of June 28, 1911; U. S. Ex. 186-B, Map of Panama; U. S. Ex. 186-C, Envelope; U. S. Ex. 187, Letter, L. R. Smith to Thomas O'Rourke, of July 1, 1911; and U. S. Ex. 151 (heretofore offered for identification and so marked); and, court, at the hour of 11:30 o'clock A. M., having taken a recess for 10 minutes; and, now, at the hour of 11:40 o'clock A. M., court having reconvened; and defendant and counsel being present as before; Monroe H. Conlee being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Thomas O'Rourke, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a letter, L. R. Smith to Thomas O'Rourke, of July 27, 1911, which is admitted in evidence in its behalf as U. S. Ex. 188; and court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M. of this day;

And now, at the hour of 2 o'clock P. M., court hav-

ing reconvened, and defendant and counsel being present as before; Monroe H. Conlee being present as shorthand reporter and acting as such; and the roll of the jury having been called, and all being present; and Thomas O'Rourke, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having [109] offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 189, Letter, Thos. O'Rourke to "Dear Sir," of July 23, 1911; U. S. Ex. 190, Letter, L. R. Smith to Thomas O'Rourke, of July 20, 1911; and U. S. Ex. 191, Letter, Thos. O'Rourke to "Dear Sir," of July 18, 1911; and Frederick Lawrence Anderson having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 92, Letter, "L. R. Smith" to Fred'r'k L. Anderson, of July 13, 1911; and, also in connection with the said testimony, defendant having offered the following exhibit, which is admitted in evidence in his behalf, to wit: Defts. Ex. "H," Friman application for land; and, also in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 193, A. Friman land agreement; and U. S. Ex. 193-B, Friman cultivation agreement; and court, at the hour of 3:35 o'clock P. M., having taken a re-

cess for 10 minutes; and now, at the hour of 3:45 P. M., court having reconvened; and defendant and counsel being present as before; I. Benjamin being present as shorthand reporter of the testimony and proceeding and acting as such; and Michael Werner having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 194, Copy of Letter, unsigned, to Michael Werner, of May 23, 1911; U. S. Ex. 195, Letter, L. R. Smith to Michael Werner, of May 27, 1911; U. S. Ex. 196, Letter, L. R. Smith to Michael Werner, of June 1, 1911; U. S. Ex. 197, Letter, L. R. Smith to Michael Werner, of June 3, 1911; U. S. Ex. 198, Letter, L. R. Smith to Michael Werner, of June 3, 1911; U. S. Ex. 199, [110] Letter, Michael Werner to Panama Development Co., of July 10, 1911; and U. S. Ex. 200, Letter, L. R. Smith to Michael Werner, of July 11, 1911; it is, at the hour of 4:38 o'clock P. M., ordered that this cause be, and the same hereby is continued until Friday, the 14th day of November, 1913, at 10:30 o'clock A. M., until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [111]

Minutes of Trial—November 14, 1913.

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 14th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Michael Werner, a witness on behalf of the United States, having resumed the stand for further cross-examination, and having given his

testimony; and, in connection with the testimony of said witness, defendant having offered a letter, Michael Werner to Panama Development Company which is admitted in evidence as Defts. Ex. I; and Robert J. Nelson having been called and sworn as a witness on behalf of the United States, and having given his testimony; it is ordered that this cause be, and the same hereby is passed temporarily to enable the Court to receive a partial report of the U. S. Grand Jury, this cause to be again called for further trial immediately after the receiving of said Grand Jury report and the entry of the orders connected therewith and occasioned thereby. [112]

(Later in the morning.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause having again been called at this time for further trial before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assitant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being

present; and Robert J. Nelson, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and Harold W. Tuttle having been called and sworn as a witness on behalf of the United States and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a Note of Panama Development Co. *with* Howard Automobile Co., which is admitted in evidence as U. S. Ex. 201; and court, at the hour of 11:23 A. M., having taken a recess for 14 minutes; and now, at the hour of 11:37 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Harold W. Tuttle, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and Joseph A. Seepie, Charles F. Simpson, Louis P. Dunkley and Howard E. Reach having respectively been called and sworn as witnesses on behalf of the United States, and having given [113] their testimony; and, in connection with the testimony of said last-named witness, the Government having offered a Letter, of Nov. 22, 1911, from H. C. Schaertzer to Messrs. Pratt & Reach, which is admitted in evidence in its behalf as U. S. Ex. 202; it is, at the hour of 12:30 o'clock P. M., ordered that this cause be and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Howard E. Reach, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 203, a bundle of Land Agreements, numbered from 1 to 176 inclusive (except numbers 2, 77, 82 and 85, 86, 87, 88 and 89, not included); and U. S. Ex. 204, a bundle of powers of attorney; and Raymond Gray, a witness on behalf of the [114] United States, having been recalled for further examination, and having given his testimony; and

Joseph U. Van Buren having been called and sworn as a witness on behalf of the United States and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a Contract, of August 1, 1911, with Joseph U. Van Buren, which is admitted in evidence in its behalf as U. S. Ex. 205; and Raymond Gray, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and court, at the hour of 3:35 o'clock P. M., having taken a recess for 7 minutes; and now, at the hour of 3:42 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Raymond Gray, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the defendant having offered for identification a letter of July 30, 1911, to Panama Development Co., which is for identification marked Defts. Ex. J; and Paul A. Hauser having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 206, Letter of June 6, 1911, and envelope, addressed to Mr. Paul A. Hauser; U. S. Ex. 207, Letter of June 28, 1911, and envelope, addressed to Mr. Paul A. Hauser; and U. S. Ex. 208, Letter of Aug. 4, 1911, and envelope, addressed to Mr. Paul A.

Hauser; and the Court having given the jury the usual admonition; it is, at the hour of 4:30 o'clock, P. M., ordered that [115] this cause be, and the same hereby is continued until Tuesday, the 18th day of November, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [116]

Minutes of Trial—November 18, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 18th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. attorney for the Southern District of California, appearing as counsel for the

United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Walter G. Reese and D. N. Willits having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with the testimony of the last named witness, the Government having offered a letter, Panama Development Company to Willits, and envelope, of Sept. 6, 1911, which are admitted in evidence as U. S. Ex. 209; and Mrs. J. Kloninger having been called and sworn as a witness on behalf of the United States, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered a receipt of Panama Development Co., dated Aug. 16, 1911, which is admitted in evidence in its behalf as U. S. Ex. 210; and Mrs. [117] J. F. Steele having been called and sworn as a witness on behalf of the United States, and having given her testimony; and court, at the hour of 11:44 o'clock A. M., having taken a recess for 7 minutes; and now, at the hour of 11:51 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and David B. Low having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 12:35 o'clock P. M., having

taken a recess until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and David B. Low, a witness on behalf of the United States, having resumed the stand for further examination and having given his testimony; and Walter A. Leach having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a letter, L. L. Maynard to W. A. Leach, of Aug. 7, 1911, which is admitted in evidence in its behalf as U. S. Ex. 211; and Wellington B. Wheeler having been called and sworn as a witness on behalf of the United States, and having given his testimony; it is, at the hour of 2:45 o'clock P. M., ordered that this cause be, and the same hereby is passed temporarily for further trial, to enable the Court to receive a partial report of the U. S. Grand Jury, this cause to be again called for further trial after the receipt of said report and the entry of the necessary orders connected therewith and occasioned thereby. [118]

(At 2:50 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on now, at the hour of 2:50 o'clock P. M., to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and the roll of the jury having been called and all being present; and Stefan Hladish having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 212, Letter Stefan Hladish to Panama Development Co., of June 23, 1911, U. S. Ex. 213, Letter, Panama Development Co. to Stefan Hladish, of June 26, 1911; U. S. Ex. 214, Letter, Panama Development Co. to Stefan Hladish, of June 16, 1911; U. S. Ex. 215, Letter, L. R. Smith to Stefan Hladish, of June 28, 1911; and U. S. Ex. 216, Letter, L. R. Smith to Stefan Hladish, of July 21, 1911; and court, at the hour of 3:50 o'clock P. M., having taken a recess for 8 minutes; and now, at the hour of 3:38 o'clock P. M., court having reconvened; and defendant, counsel and the shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and H. George Cooley, Archibald B. Cleaver, and Percy G. Soleberg having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; it is, at [119] the hour of

4:28 o'clock P. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 19th day of November, A. D. 1913, at 10:30 o'clock A. M., for further trial until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [120]

Minutes of Trial—November 19, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 19th day of November, in the year of our Lord one thousand nine hundred and and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; and defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; M. H. Conlee being present as short-

hand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Edmund Greene Loeve, John Edward Mitchell, S. H. Joppe and Thomas H. Silsbee having respectively been called and duly sworn as witnesses on behalf of the United States, and having given their testimony; and Court, at the hour of 11:38 o'clock A. M., having taken a recess for 8 minutes; and now, at the hour of 11:46 o'clock A. M., Court having reconvened; and defendant and counsel being present as before; I. Benjamin being present as shorthand reporter of the testimony and proceedings and acting as such; and the roll of the jury having been called and all being present; and Thomas H. Silsbee, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; it is, at the hour [121] of 11:31 o'clock A. M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial, until which time the jury are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; M. H. Conlee being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Thomas H. Silsbee, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and Chas. Melville Brown having been called and duly sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a copy of "American Lumberman," for March 15, 1910, which is admitted in evidence as U. S. Ex. 217; and Court, at the hour of 3:35 o'clock P. M., having taken a recess for 5 minutes; and now, at the hour of 4:40 o'clock P. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Chas. Melville Brown, a witness on behalf of the United States, having resumed the stand [122] for further examination, and having given his testimony; and C. E. Webster having been called and duly sworn as a witness on behalf of the United States, and having given his testimony; it is, at the hour of 4:08 o'clock P. M., by the Court ordered that

this cause be, and the same hereby is continued for further trial until Thursday, the 20th day of November, 1913, at 10:30 o'clock A. M., until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [123]

Minutes of Trial—November 20, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 20th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.
JOHN GRANT LYMAN,
Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; M. H. Conlee being present as shorthand re-

porter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a letter of July 18, 1911, L. R. Smith to Mr. E. D. Ryan, c/o Hernan de la Guardia, with copy of letter and list attached, which are admitted in evidence as U. S. Ex. 218; and Court, at the hour of 11:30 o'clock A. M., having taken a recess for 9 minutes; and now, at the hour of 11:39 o'clock A. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a [124] witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; it is, at the hour of 12:15 o'clock P. M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and Court, at the hour of 3:34 o'clock P. M., having taken a recess for 5 minutes; and now, at the hour of 3:39 o'clock P. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; it is, at the hour of 4:30 o'clock P. M., ordered that this cause be, and the same hereby is continued [125] until Friday, the 21st day of November, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [126]

Minutes of Trial—November 21, 1913.

At a stated term to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 21st day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

This cause coming on this day to be further tried before the court and a jury hertofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Hernan de la Guardia, a witness on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and the jury, at the hour of 10:40 o'clock

A. M., having been excused from the courtroom temporarily during the argument of a question of law; and said question of law having been argued by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States, and by Paul Schenck, Esq., of counsel for defendant; and the jury, at the hour of 10:48 o'clock A. M., having been recalled into court; and the roll of the jury having been called; and all being present; and Frank Burnett having been called and sworn as a witness on behalf of the United States, and [127] having given his testimony; and W. I. Madeira, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and court, at the hour of 11:32 o'clock A. M., having taken a recess for 12 minutes; and now, at the hour of 11:44 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and W. I. Madeira, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government offered the following exhibits, which are admitted in evidence in its behalf, to wit: U. S. Ex. 219, blank check on National Bank of California, of Los Angeles, of Panama Development Company by John Redpath, V. P., L. R. Smith, Sec.; and U. S. Ex. 220, blank check on security Savings Bank of Los Angeles, of Panama Development Co., by

John Redpath, Pres., E. A. Lyman, Asst. Sec.; and, also in connection with the testimony of said witness, the Government having offered for identification *and* following exhibit, which is for identification marked with the following exhibit number, to wit: U. S. Ex. 221, six letters, the first dated June 1, 1911, addressed: "My darling Jack"; it is, at the hour of 12:30 o'clock P. M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial, until which time the jury are excused. Defendant is remanded to the custody of the U. S. Marshal.

[128]

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings and acting as such; and the roll of the jury having been called, and all being present; and W. I. Madeira, a witness

on behalf of the United States, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered for identification fourteen letters and fourteen envelopes, the first envelope being postmarked on the back New Orleans Sept. 12, 1913, which are for identification marked U. S. Ex. 222; and Robert H. Morse and John A. Schaertner having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and certain records of the U. S. District Court for the Northern District of California having been identified by the last-named witness, and the substance thereof having been read into the record; and George H. Burnham having been called and sworn as a witness on behalf of the United States, and having given his testimony; and Maurice Joseph Fitzgerald having been called and sworn as a witness on behalf of the United States, and having given *their* testimony; and a telegram having been read into the record by Edward A. Regan, Esq., Special Assistant [129] to the U. S. Attorney for the Southern District of California, of counsel for the United States, on behalf of the Government, said telegram not being offered as an exhibit; and Court at the hour of 3:30 o'clock P. M., having taken a recess for 8 minutes; and now, at the hour of 3:38 o'clock P. M., Court having reconvened; and defendant and counsel being present as before; I. Benjamin and Edwin M. Williams being present as shorthand reporters and acting as such; and the roll of the

jury having been called, and all being present; and Edw. G. McDonnell and Louis P. Thonet having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; it is, at the hour of 4:30 o'clock P. M., by the Court ordered that this cause be, and the same hereby is continued until Tuesday, the 25th day of November, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [130]

Minutes of Trial—November 25, 1913.

At a stated term, to wit, the July term A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 25th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special

Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Thomas H. Silsbee, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and the jury, at the hour of 10:44 o'clock A. M., having been excused from the courtroom temporarily during an argument of counsel; and a question of law having been argued by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and the jury, at the hour of 10:51 o'clock A. M., having been recalled into court; and the roll of the jury having been called, and all being present; and Paul J. Arnerich and Joseph F. Morley, having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and a certified copy of a commitment of John Grant [131] Lyman, by the District Court of the United States, for the Northern District of California, and also a certificate of the Warden of the U. S. Penitentiary at McNeil's Island, Washington, having been read into the record on behalf of the Government by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and counsel for the respective

parties having stipulated in open court that the first time the defendant herein was physically within this District after his indictment was March 30th, 1913; and C. E. Webster, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and Charles K. Clark having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 11:33 o'clock A. M., having taken a recess for 10 minutes; and now, at the hour of 11:43 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Chas. K. Clark having been called and sworn as a witness on behalf of the United States, and having given his testimony; and court, at the hour of 11:33 o'clock A. M., having taken a recess for 10 minutes; and now at the hour of 11:43 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Chas. K. Clark, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and C. E. Webster, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and John Miller Colan having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the substance of two papers, to wit, a deed and a mortgage, which were identified by

said witness, having been read to the jury by [132] Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and Raymond Gray, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and court, at the hour of 12:32 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States, having read into the record on behalf of the Government certain portions of Register of Actions of this Court; it is, at the hour of 2:07 o'clock P. M., by the Court ordered that this cause be, and the same hereby is passed temporarily for further trial, to enable the court to receive a partial report of the U. S. Grand Jury, this cause to be called again for further trial after the receipt of said report and the entry of the orders connected therewith or occasioned thereby.

(At 2:11 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,	Plaintiffs,
vs.	
JOHN GRANT LYMAN,	Defendant.

This cause having now, at the hour of 2:11 o'clock P. M., been again called for further trial before the court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant [133] being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Mrs. Ida Marie McDonald having been called and sworn as a witness on behalf of the United States, and having given her testimony; and John Redpath, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and Ervin Dingle and A. C. Sittel having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and a certain letter from the Department of Justice having been read into the record on behalf of the Government by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and the jury, at the hour of 3:25 o'clock P. M., having been excused until Wednesday, the 26th day of November, 1913, at 10:30 o'clock A. M., it is, at the hour of 3:30 o'clock P. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 26th day of November, 1913, at 10:30 o'clock A. M. [134]

Minutes of Trial—November 26, 1913

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Wednesday, the 26th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Raymond Gray, a witness on behalf of the United States, having been recalled for further examination, and having given his testimony; and the Government having rested, reserving, however, the

right hereafter to call one additional witness as a part of its direct case; and Paul Schenck, Esq., of counsel for defendant, having, on behalf of said defendant, read U. S. Ex. 165, pamphlet entitled "Am I Insane?" to the jury; and court, at the hour of 11:32 o'clock A. M., having taken a recess for 8 minutes; and now, at the hour of 11:40 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Paul Schenck, Esq., of counsel [135] for defendant, having continued the reading on behalf of said defendant, of U. S. Ex. 165, pamphlet entitled "Am I Insane?" to the jury; it is, at the hour of 12:17 o'clock P. M., by the Court ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern

District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant having been called and sworn as a witness in his own behalf, and having given his testimony; and court, at the hour of 2:20 o'clock P. M., having taken a recess for 12 minutes; and now, at the hour of 2:32 o'clock P. M., *court at the hour of 2:32 o'clock P. M.*, court having reconvened; and defendant, counsel and the shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and court, at the hour of 3:35 o'clock P. M., having taken a recess for 5 minutes; and now, at the hour of 3:40 o'clock P. M., court having reconvened; and defendant, counsel and shorthand [136] reporter being present as before; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the defendant having offered the following exhibits, which are admitted in evidence in his behalf, to wit: Defts. Ex. "K," Carbon copy of letter, J. G. Lyman to Dr. Albert Hale, dated Apr. 21, 1911; Defts. Ex.

“L,” Letter of Dr. Albert Hale to J. G. Lyman, dated April 27, 1911; Defts. Ex. “M,” Carbon copy of Letter, Dr. Lyman to Dr. Hale, dated Apr. 24, 1911; and Defts. Ex. “N,” Carbon copy of Letter, Dr. Lyman to Dr. Hale, dated May 2, 1911; it is, at the hour of 4:32 o’clock P. M., ordered that this cause be, and the same hereby is continued for further trial until Friday, the 28th day of November, 1913, at 10:30 o’clock A. M., until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [137]

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 28th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

Minutes of Trial—November 28, 1913.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assist-

ant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the defendant having offered the following exhibits, which are admitted in evidence in his behalf, to wit: Defts. Ex. "O," Letter, Dr. Hale to Dr. Lyman, of May 9, 1911; Defts. Ex. "P," Carbon copy letter, Dr. Lyman to Dr. Hale, of May 15, 1911; Defts. Ex. "Q," Letter, Dr. Hale to Dr. Lyman, of May 27, 1911; Defts. Ex. "R," carbon letter, Dr. Lyman to Dr. Hale of Aug. 4, 1911; Defts. Ex. "S," carbon copy of letter, Dr. Lyman to Dr. Hale, of July 19, 1911; Defts. Ex. "T," carbon copy of letter, Dr. Lyman to Dr. Hale, of June 5, 1911; Defts. Ex. "U," Letter, Dr. Hale to Dr. Lyman, of June 13, 1911; and Defts. Ex. [138] "V," Letter, Dr. Hale to Dr. Lyman, of July 12, 1911; it is, at the hour of 11:58 o'clock A. M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock, P. M., of this day for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., Edwin M. Williams being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and Paul Schenck, Esq., of counsel for defendant, having read into the record, on behalf of defendant, excerpts from bulletins of the Pan-American Union and a book by Forbes Lindsay; and the jury, at the hour of 2:50 o'clock P. M., having been excused from the court room temporarily during an argument of counsel; and a point of law having been argued, on behalf of the Government, by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel

for the United States, and on behalf of defendant by Paul Schenck, Esq., of counsel for defendant; and the jury, at the hour of 3:06 o'clock P. M., [139] having been recalled into court; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, being on the stand; and Paul Schenck, Esq., of counsel for defendant, having continued the reading into the record, on behalf of defendant, of said bulletins of the Pan-American Union and book by Forbes Lindsay; and court, at the hour of 3:30 o'clock P. M., having taken a recess for 5 minutes; and now, at the hour of 3:35 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, being on the stand for further examination, and having given his testimony; it is, at the hour of 4:32 o'clock P. M., ordered that this cause be, and the same hereby is continued until Tuesday, the 2d day of December, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. [140]

Minutes of Trial—December 2, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 2d day of December, in the year of

our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having heretofore been called, in connection with the roll-call of the Term Trial Jury, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination; Paul Schenck, Esq., of counsel for defendant having made a statement to the court and having requested an investigation of certain articles appearing in the public press relating to this case; and statements concerning said matter having been made by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and further statements having

been made concerning the same by Paul Schenck, Esq., of counsel for defendant, by the Court, and by Edward A. Regan, [141] Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; the Court thereupon admonishes the jury to disregard all newspaper articles concerning this cause; and the jury, at the hour of 11:08 o'clock A. M., having been excused from the courtroom temporarily; and further statements concerning said newspaper articles having been made to the Court in the absence of the jury by counsel for the Government and by counsel for defendant; and the jury, at the hour of 11:13 o'clock A. M., having been recalled into court; and the roll of the jury having been called and all being present; and the Court having given the jury the usual admonition, and having, in addition, admonished the jury not to talk about events occurring in the courtroom; it is, at the hour of 11:15 o'clock A. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 3d day of December, 1913, at 10:30 o'clock A. M., until which time the jurors are excused. [142]

Minutes of Trial—December 3, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 3d day of December, in the year

of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States, having made a statement as to a certain newspaper article concerning this case, and statements regarding the same having also been made by the Court and by Paul S. Schenck, Esq., of counsel for defendant; and the Court having made a further statement concerning the same, and having admonished the jury to disregard and dismiss from consideration all newspaper articles regarding this trial; and John Grant Lyman, the defendant, a witness in his behalf, having re-

sumed the stand for further examination, and having given his testimony; and, in connection with the testimony [143] of said witness, defendant having offered two letters, which are together admitted in evidence in his behalf, as Defts. Ex. "J," to wit: Letter of July 30, 1911, J. R. Thomas to Panama Development Company and letter of Aug. 26, 1911, Panama Development Company to J. R. Thomas; it is, at the hour of 11:58 o'clock A. M., ordered that this cause be, and the same hereby is continued until the hour of 2 o'clock P. M., of this day for further trial until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., Monroe H. Conlee being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called,

and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, defendant having offered four letters, from Dr. Lyman to Mr. C. Quelquejeu and from Mr. Quelquejeu to Dr. Lyman, of dates from Apr. 17, 1911, to June 1, 1911, which are together admitted in evidence in his behalf as Defts. Ex. "W"; and court, at the hour of 3:35 o'clock P. M., having taken a recess for 10 minutes; and now, at the hour of 3:45 o'clock [144] P. M. court having reconvened; and defendant, counsel and shorthand reporter being present as before, and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, being on the stand for further examination, and having given his testimony; it is, at the hour of 4:30 o'clock P. M., ordered that this cause be, and the same hereby is continued for further trial until Thursday, the 4th day of December, 1913, at 10:30 o'clock A. M., until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [145]

Minutes of Trial—December 4, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 4th day of December, in the year

of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin and Monroe H. Conlee, being present as shorthand reporters of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, being on the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered for identification the following exhibit numbers, to wit: U. S. Ex. 223, Letter, Panama Development Co. to Chown, Ussharex, London, Representative sailing September; and U. S. Ex. 224, Letter, Panama Development Co. to Geo. S. Smith, Dalby-Welch Co., of June 6, 1911; and, also in con-

nection with said testimony, the Government having offered the following exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 225, Letter, Geo. S. Smith, Dalby-Welch Co., to Panama Development Co., of July 13, 1911; and, also in connection with said testimony, the Government having offered for identification [146] a letter, Panama Development Co. to Geo. S. Smith, Dalby-Welch Co., of Aug. 15, 1911, which is given the following exhibit number, to wit: U. S. Ex. 226 for identification; and court, at the hour of 11:35 o'clock A. M., having taken a recess for 12 minutes; and now, at the hour of 11:47 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporters being present as before; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; it is, at the hour of 12:13 o'clock P. M., ordered that this cause be, and the same hereby is continued for further trial until the hour of 2 o'clock P. M., of this day, until which time the jurors are excused.

(At 2 P. M.)

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on at this time to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin and Monroe H. Conlee being present as shorthand reporters of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and John Grant Lyman, the defendant, a witness in his own behalf, having resumed the stand for further examination, and having given his testimony; and, in connection with the testimony of [147] said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 162, Telegram of Sept. 4, 1911, without signature, to Geo. M. Byrd; and, also in connection with said testimony, defendant having offered a blank form of transfer of stock, which is admitted in evidence in his behalf as Defts. Ex. "X"; and defendant having rested, reserving, however, the privilege of calling one other witness; and Charles S. Sprague having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and Milton M. Detch having been called and sworn as a witness on behalf of the United States in rebuttal, but having given no testimony at this time; and court, at the hour of 3:35 P. M., having taken a recess for 5 minutes; and now, at the hour of 3:40 o'clock P. M., court having reconvened; and defendant, counsel and shorthand report-

ers being present as before; and the roll of the jury having been called, and all being present; and Milton M. Detch, a witness heretofore sworn on behalf of the United States, having resumed the stand and having now given his testimony in rebuttal on behalf of the United States; and Mrs. James M. Cholwell and Anthony Macauley having been called and sworn as witnesses on behalf of the United States in rebuttal, and having given their testimony; it is, at the hour of 4:28 o'clock A. M., ordered that this cause be, and the same hereby is continued until Friday, the 5th day of December, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. Defendant is remanded to the custody of the U. S. Marshal. [148]

Minutes of Trial—December 5, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 5th day of December, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impanelled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; and defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Leta Hubb, a witness heretofore sworn herein, having been called as a witness on behalf of the United States in rebuttal, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 223, heretofore offered and marked for identification, being a Letter, Panama Development Company to Chown, Ussharex, London, Representative sailing September; and M. J. Moore having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and J. Miller Colan, a witness heretofore sworn herein, having been called as a witness on behalf of the United States in rebuttal, [149] and having given his testimony; and John Grant Lyman, the defendant, heretofore sworn as a witness in his own behalf, having been called for further cross-examination, and having given his testimony; and Mrs. I. M. McDonald, heretofore sworn as a witness on behalf of the United

States in rebuttal, and having given her testimony; and Lou Blakeslee having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and Edward F. Dishman having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and Mrs. I. M. McDonald, a witness on behalf of the United States in rebuttal, having been recalled for further examination, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit: U. S. Ex. 226, Letter, Panama Development Company to Geo. S. Smith, Dalby-Welch Co., of Aug. 15, 1911; and Eugene Duke Ryan having been called and sworn as a witness on behalf of the United States to testify as a part of the Government's case in chief, pursuant to the reservation heretofore made by the Government in that behalf, and said witness having given his testimony; and court, at the hour of 12:03 o'clock P. M., having taken a recess until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and Paul Schenck, Esq., of counsel for defendant, having stated to the Court, that defendant desires to secure the attendance herein, as a witness in his behalf, of Edward G. Edmunds, a Federal prisoner now confined in the Los Angeles County Jail, it is by

the Court ordered that the U. S. Marshal produce said Edward G. Edmunds herein forthwith, said Edmunds to be in the custody of said Marshal and returned to the [150] Los Angeles County Jail by said Marshal after being discharged as a witness herein; and Eugene Duke Ryan, a witness on behalf of the United States as part of the Government's case in chief, having resumed the stand for further examination, and having given his testimony; and Edward G. Edmunds, a Federal prisoner now confined in the Los Angeles County Jail under sentence of this Court, who is now present in court in custody of the U. S. Marshal, having been called and sworn as a witness on behalf of defendant, and having given his testimony; and said Edward G. Edmunds having thereupon been remanded to the custody of the U. S. Marshal, to be forthwith by said Marshal returned to the custody of the jailer of the County Jail of Los Angeles County, California; and Joseph F. Morley, a witness heretofore sworn herein, having been called as a witness on behalf of the United States in rebuttal, and having given his testimony; and Frederick Charles Jordon having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and Leta Hubb, a witness on behalf of the United States in rebuttal, having been recalled for further cross-examination, and having given her testimony; and the Government having rested, reserving, however, the right of calling an additional witness; and John Grant Lyman, the defendant, heretofore sworn as a witness herein, having been called as a witness

in his own behalf, in surrebuttal, and having given his testimony; and defendant having rested, reserving, however, the right to call an additional witness; and the Court having given the jury the usual admonition; it is, at the hour of 3:35 o'clock P. M., ordered that this cause be, and the same hereby is continued until Tuesday, the 9th day of December, 1913, at 10:30 o'clock A. M., for further trial and proceedings. [151]

Minutes of Trial—December 9, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held in the courtroom thereof, in the city of Los Angeles, on Tuesday, the 9th day of December, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody

of the U. S. Marshal, with his counsel, Paul Schenck, Esq., I. Benjamin being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, in connection with the call of the roll of the entire panel of term trial jurors, and all being present; and Bernard McConville having been called and sworn as a witness on behalf of the Government in rebuttal, and having given his testimony; and the defendant having offered an exhibit, which is admitted in evidence in his behalf, to wit: Defts. Ex. "Y," shorthand notebook; and the Government having rested; and the testimony being closed; and said cause having been argued to the jury by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and court, at the hour of 11:30 o'clock A. M., having taken a recess for 9 minutes; and now, at the hour of 11:39 o'clock A. M. [152] court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and said cause having been further argued to the jury by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and court, at the hour of 12:20 o'clock P. M., having taken a recess until the hour of 1:20 o'clock P. M., of this day;

And court, at the hour of 1:20 o'clock P. M., having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present;

and said cause having been further argued to the jury by Paul Schenck, Esq., of counsel for defendant; and court, at the hour of 2:43 o'clock P. M., having taken a recess for 7 minutes; and now, at the hour of 2:50 o'clock P. M., court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and said cause having been further argued to the jury in reply by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, of counsel for the United States; and the argument being closed; and the court having given the jury the usual admonition; it is, at the hour of 3:10 o'clock P. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 10th day of December, 1913, at 10:30 o'clock A. M., for further trial, until which time the jurors are excused. [153]

Minutes of Trial—December 10, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 10th day of December, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause coming on this day to be further tried before the Court and a jury heretofore duly impaneled herein; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq.; I. Benjamin being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and the Court having read to the jury its written instructions; and the Court having refused to give the instructions requested by the Government, and also the instructions requested by the defendant, except in so far as they may be embodied in the instructions given by the Court; it is ordered that exceptions be, and they hereby are noted herein, on behalf of defendant, to each and every of the instructions given by the Court, and to the refusal of the Court to give each and every of the instructions requested by the defendant which [154] the Court refused to give; and the jury, at the hour of 10:45 o'clock A. M., having retired to consider their verdict; now, at the hour of 12:15 o'clock P. M.,

the jury having been brought into court; defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and the jury having been asked if they have agreed upon a verdict, and having replied that they have not so agreed; it is ordered that the U. S. Marshal take the jury to some suitable place for their dinner, said dinner, for the jurors and the accompanying officers, to be at the expense of the United States, and that said Marshal thereafter return the jurors to their room for further deliberation concerning their verdict; and, at the hour of 12:18 o'clock P. M., the jury having retired in company with the U. S. Marshal; and the jury, at the hour of 5:11 o'clock P. M., having come into court; defendant, counsel and shorthand reporter being present as before; and the roll of the jury having been called, and all being present; and the jury having asked the Court for certain additional instructions; and the jury, at the hour of 5:14 o'clock P. M., having retired to their room; and the Court having invited a discussion by counsel as to the desired additional instructions; and the matter of said additional instructions having been argued by Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, and by Paul Schenck, Esq., of counsel for defendant; and the jury, at the hour of 6:37 o'clock P. M., having come into court; and the roll of the jury having been called, and all being present and defendant and counsel being present as before; and Edwin M. Williams being present as shorthand reporter of the

proceedings, and acting as such; and the Court having read to the jury further instructions; it is ordered that exceptions be, and they hereby are noted herein on behalf of the defendant to the further instructions now given by the Court; and the jury, at the hour of 6:41 o'clock P. M., [155] having retired to consider their verdict; and the jury, at the hour of 7:47 o'clock P. M., having come into court; and defendant and counsel being present as before; I. Benjamin being present as shorthand reporter of the proceedings herein, and acting as such; and the roll of the jury having been called, and all being present; it is now by the Court ordered that the U. S. Marshal take the jurors to some suitable place for their supper, said supper, for the jurors and the accompanying officers, to be at the expense of the United States, and that said Marshal thereafter return the jury to their room for further consideration of their verdict; and it is further ordered that, on the morning of Thursday, the 11th day of December, 1913, at such time as the jurors desire, the U. S. Marshal take the jurors to some suitable place for their breakfast, said breakfast, for the jurors and the accompanying officers, to be at the expense of the United States, and that said Marshal thereafter return the jurors to their room for further consideration concerning their verdict; thereupon, at the hour of 7:49 o'clock P. M., the jury retire to their room. [156]

Minutes of Trial—December 11, 1913.

At a stated term, to wit, the July term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 11th day of December, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

The jury herein, at the hour of 10:09 o'clock A. M., having come into court; Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present, in custody of the U. S. Marshal, with his counsel, Paul Schenck, Esq., I. Benjamin being present as shorthand reporter of the proceedings; and the roll of the jury having been called, and all being present; and the jurors having been asked if they have agreed upon a verdict, and having by their foreman replied that they have so agreed, and having been required to state their verdict, and their verdict having been read by the foreman; now, by direction of the Court,

said verdict is filed and recorded by the clerk, said verdict being as follows, and the following being the record thereof, to wit:

*In the District Court of the United States, for the
Southern District of California, Southern Divi-
sion.*

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JOHN GRANT LYMAN,
Defendant.

We, the jury in the above-entitled cause, find the defendant, John Grant Lyman, guilty as charged in the first count of [157] the indictment, and not guilty as charged in the second, third, fourth, fifth and sixth counts of the indictment.

Los, Angeles, Cal., Dec. 11th, 1913.

S. M. GODDARD,
Foreman.

And said verdict having been read to the jury as so recorded, and the jurors having said that it is their verdict; it is now by the Court ordered that said jurors be, and they hereby are excused until Tuesday, the 16th day of December, 1913, at 10:30 o'clock A. M., except jurors Dan. J. Brownstein and Wilton B. Simmons, who, at their own request are excused for the term; thereupon, on motion of Paul Schenck, Esq., of counsel for defendant, it is ordered that this cause be, and the same hereby is continued until two

weeks from next Monday, to wit, until Monday, the 29th day of December, 1913, at 10:30 o'clock A. M., for the sentence of defendant; and it is further ordered, on motion of Edward A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, that, pending sentence, the bail of defendant be, and the same hereby is increased by \$5,000.00. Defendant is remanded to the custody of the U. S. Marshal. [158]

Instructions to the Jury Requested by Plaintiff.

Section 215, Appeal Code of 1910, contemplated any scheme involving matters of enforceable or unenforceable contract, representation of facts, expression of opinions, or assurances of past, present, or future conditions, provided only it was designed and reasonably adapted to deceive or defraud. The most successful schemes to defraud are those dressed in the garb of honesty, and hedged about with all the appearances of legal and enforceable undertakings. If the intent and purpose is to deceive and defraud the unwary, it matters not what form the project is made to take.

The scheme and artifice charged against the defendant is that he would organize and control a corporation called the Panama Development Company, and would falsely represent that it had a paid-up capital of \$50,000; and that it was the agent of the Government of Panama for the purpose of selling Panamanian Government lands, situated in certain Provinces of Panama; that some of the officers and directors of said corporation were men of prominence in Panama, and connected with the Govern-

ment of Panama, and that the remaining directors were men of prominence elsewhere; that the corporation, as agent for the Panama Government, offered for sale Government lands consisting of agricultural, timber and mineral lands, situated in the District of Cocle, Verauga and Chiriqui, Republic of Panama, to persons making application for the purchase of same to the said corporation, on the payment of \$2.50 an acre down, and the balance of \$2.50 within four years; and that when the Panama Development Company received these applications, and the receipt of one-half the purchase price, the Panama Development Company would immediately have the said application filed with the Panamanian Government, through its representatives in the Republic of Panama, [159] and then the Panama Government would make the allotment of land as designated in the application, and would issue a Provisional Title to the applicant, and would upon the completion of payments issue a full and complete title to the land to the said applicant.

It is charged further that the defendant, acting through the Panama Development Company, represented that the company had experts in the Republic of Panama who were familiar with the location and character of the Government lands, and they could therefore select better lands for the applicants than they could themselves; and that the Panama Development Company could and would furnish maps showing the location of the Government land which the company was offering for sale; and that the Panama Development Company was clearing and cul-

tivating some of the Government land which it had theretofore sold, and it would continue to clear and cultivate lands sold to purchasers; that the Panama Development has sold 10,000 acres to an American colony, and offered for sale and would sell Government lands situated in the District of Agua Dulce upon application being made therefor.

It is charged further that the defendant, through the said Panama Development Company, represented that a railroad was being built from the city of Panama to the city of David; represented further that the Panama Development Company had for sale 16,000 acres of Government timber land in *Verauga*; and represented further that on August 1st the price of Government land would be increased from \$5.00 to \$6.00 per acre; and that at any time within two years any persons purchasing any land from the Panama Development Company could, if dissatisfied, have their money returned upon [160] demand, and that these representations were false.

If you are satisfied beyond a reasonable doubt from the testimony in this case that the defendant made, or caused to be made, one, or more, or in substance, the false representations charged in the indictment, and that such false representations were so made in pursuance of a scheme or artifice to defraud, previously devised by the defendant; and that in, and for the purpose of executing such scheme or artifice, the defendant deposited, or caused to be deposited, in the Postoffice of the United States, the several letters described in the different counts of the indictment, you will find the defendant guilty as charged.

The question you have to consider is whether the defendant planned, or intended, or tried to plan, a method by which he could use the mails in inducing people to communicate with the Panama Development Company, or come into communication with it, or to get in touch with people so these people would be deceived, or misled into paying, or sending their money, or transferring their property to the Panama Development Company, under ideas not justified by the facts as they actually existed.

McCarty vs. United States, 187 Fed. 117.

Durland vs. United States, 161 U. S. 306.

The scheme charged against the defendant depends to a [161] large extent upon whether or not defendant caused the Panama Development Company to represent itself as the agent of the Republic of Panama for the sale of government lands. Evidence has been introduced to the effect that this representation was made, and was false. The defendant denies that he caused such a representation to be made. If you believe beyond a reasonable doubt that this representation was made, and that the defendant caused it or was instrumental in causing it to be made, and that in addition thereto he caused the false representations alleged in the indictment to be substantially made for the purpose of convincing people and causing them to believe that the Panama Development Co. was the agent of the Panamanian Government for the sale of the government lands described, you must find the defendant guilty as charged.

It is not necessary that in using the mails for the

furtherance of a scheme to defraud, that the defendant personally deposit any of the letters in the mail. It is sufficient if in the ordinary course of business he caused the letters to be deposited in the mails. Evidence has been introduced, and not contradicted, that the letter written to Werner, set forth in Count 5 of the indictment, was dictated by the defendant, and if you believe this to be true beyond reasonable doubt, and believe further that he caused this letter to be deposited in the United States mails, then you must find the defendant guilty as charged in Count 5 of the indictment.

[Endorsed]: No. 672—Crim. U. S. District Court, Southern District of California, Southern Division. United States vs. John Grant Lyman. Plaintiff's Instructions Refused. Filed Dec. 10, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [162]

Instructions to the Jury Requested by Defendant.

In criminal cases where a chain of circumstances is relied upon to secure a conviction and any one necessary link of that chain is made by a circumstance which, when considered in the light of all the circumstances proved, is as consistent with innocence as it is with guilt, the said circumstance must be resolved in favor of innocence; that link must fail; the chain must break and the defendant must be acquitted.

Requested by defendant and ———.

—————, Judge.

You are instructed that you must not suffer yourselves to be prejudiced against the defendant because

of the fact that he is charged with this offense, and you must not suffer yourselves to be led to convict the defendant for fear that a crime may go unavenged, or for the purpose of deterring others from the commission of like offenses.

No such argument or reason can be weighty enough to justify you in laying aside or ignoring that just and most humane rule of law which says that you must acquit the defendant unless every fact necessary to establish his guilt has been proven to you beyond a reasonable doubt.

Requested by defendant and ———.

—————, Judge. [163]

In considering the weight and effect to be given to the evidence of the defendant, while you may consider his manner, and the probability of his statements, taken in connection with all the evidence in the case, and, if convincing and carrying with it a belief in its truth, act upon it; if not, you have the right to reject it. But this does not mean that you have the right to arbitrarily reject it. And, in judging of the defendant who has testified before you, you are in duty bound to presume that he has spoken the truth; and, unless that presumption has been legally repelled, his evidence is entitled to full credit.

Requested by defendant and ———

—————, Judge.

It is not your duty to look for some theory upon which to convict the defendant, but on the contrary, it is your duty and the law requires you, if you can reasonably do so, to reconcile any and all facts and circumstances that have been shown, with the inno-

cence of the defendant and acquit him.

Requested by defendant and ——.

———, Judge.

Evidence has been given in this case touching the escape and attempted escape of the defendant from the custody of the law.

Such evidence is given before you as tending in some degree to indicate a consciousness of guilt on the part of the defendant, but I caution you that such evidence is considered, [164] in law, of the weakest kind, and, being based upon an inference, may or may not tend to show a consciousness of guilt, and taken in consideration with other evidence in the case, may or may not be of any import.

Requested by defendant and ——.

———, Judge.

You are instructed that for a person to escape from the custody of the law, or to attempt so to do, or to take flight instead of standing trial, is not sufficient, standing alone, to warrant or justify a conviction.

Such evidence is adduced upon the theory that from it may be drawn an inference of a consciousness of wrongdoing, but such inference may be wholly repelled by other facts and circumstances in the case, or by some satisfactory explanation of the reason prompting such action, and of all these matters the jurors are the sole judges.

Requested by defendant and ——.

———, Judge.

The Court instructs you, that if any of the representations alleged in the indictment to have been made were false, but the defendant honestly believed

them to be true, then such representations were not fraudulent.

Requested by defendant and ———.

—————, Judge.

You are further instructed that if the alleged representations or some of them were not intentionally false, the fact that the alleged scheme failed because of mistakes or lack of judgment, if such caused its failure, does not make the defendant guilty.

You should not find the defendant guilty for mere errors of judgment or overconfidence in his ability to make the alleged scheme a success.

Requested by defendant and ———.

—————, Judge. [165]

You are instructed that the defendant, John Grant Lyman, in this case is not to be charged with or held criminally responsible for the act or acts of any person connected with the Panama Development Company unless you believe from the evidence, beyond a reasonable doubt, that the said John Grant Lyman counseled, aided, encouraged or otherwise, with a knowledge of the facts, caused such act to be done or omitted.

Requested by defendant and ———.

—————, Judge.

You are instructed that the defendant in this case is not to be presumed to know anything because he ought to have known it. The presumption of innocence with which the law clothes the defendant is sufficient to overcome a presumption which might

prevail in a civil case that he knew because he ought to have known.

Requested by defendant and ———.

—————, Judge.

The indictment in this case contains six counts, all of which are substantially the same, except in so far as a different letter is set forth in each count as being the letter which was deposited in the postoffice in furtherance of the alleged scheme. [166]

You must not suffer yourselves to hold the defendant responsible for the depositing of any such letter in the postoffice unless, from all the evidence, you believe beyond a reasonable doubt, that he either did deposit such letter, or caused the same to be deposited as it is charged in the indictment, and if you have a reasonable doubt whether the defendant did or did not deposit, or cause to be deposited any one of the several letters set forth in the indictment, then, as to that particular count or counts, you must acquit the defendant.

Requested by defendant and ———.

—————, Judge.

You are instructed that the various counts of the indictment in this case charge substantially the same offense, the only difference being that each count sets forth a different letter as having been deposited in the mails.

The essential elements of this offense are the devising or intention to devise a scheme or device for the perpetration of a fraud, and the use of the United States mails in furtherance of such scheme or device, and this is the only offense which is before you for

your consideration, and in considering the same you have only the right to consider such evidence as has been permitted to come before you in the courtroom.

Requested by defendant and ———.

—————, Judge. [167]

If, after the entire comparison and consideration of all the evidence, it leaves you in that condition that you cannot say you feel an abiding conviction, to a moral certainty, of the truth of the charge, you must acquit the defendant. The burden of proof is upon the prosecution. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it.

Requested by defendant and ———.

—————, Judge.

You are instructed that by the words "intent to defraud" it is meant in law that the person charged had an intent to deprive one of something dishonestly or to obtain an unconscionable advantage, therefore if you have a reasonable doubt whether this defendant had such intentions or not you must give him

the benefit of such doubt and acquit him.

Requested by defendant and ———.

———, Judge. [168]

You are instructed that this defendant is charged with an offense which has for one of its component parts and essential elements a certain specific intent, to wit, an intent to defraud. In such a case the law raises no presumption from the commission of the act that it was committed with that certain specific intent. Whether it was committed at all or not, and if committed, whether it was committed with that certain specific intent or not, are matters to be determined by you from all the evidence in the case.

Requested by defendant and ———.

———, Judge.

You are instructed that in law there is a marked distinction between an intention to deceive and an intention to defraud and in this case although you may be convinced that the defendant intended to deceive you must acquit him if you have a reasonable doubt whether he intended to defraud or not.

Requested by defendant and ———.

———, Judge. [169]

You are instructed that where the law makes an act criminal only when done with a certain specific intent, such as an intent to defraud, then it becomes necessary for the prosecution to prove to you beyond a reasonable doubt that the defendant committed the act, if at all, with that specific intent. In arriving at your conclusion as to this intent you are to take into consideration all the facts and circumstances connected with the case such as the presumption of

the innocence of the defendant, his good character if proved, his acts and conduct in and concerning the matter and the possibility or impossibility of a consummation of such intent by the means and methods used as charged in the information.

Requested by the defendant and ———.

—————, Judge.

If, from the evidence, you believe the crime charged was in fact committed by someone, and you, from the evidence have a reasonable doubt whether it was the defendant or someone else who committed it, you must acquit the defendant.

Requested by defendant and ———.

—————, Judge.

You are instructed that testimony by one person as to what another person said ought to be viewed with caution.

Requested by defendant and ———.

—————, Judge. [170]

With respect to all verbal admissions, declarations or conversations, evidence of them should be received with great caution, consisting as it does in the repetition of oral statements it is subject to much imperfection and mistake; the party himself being misinformed, or not having expressed his own meaning, or the witness having misunderstood him, or from the infirmity of human memory. It frequently happens also that the witness unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say. And especially where the witness has not heard all the admissions, declara-

tions or conversations, and testifies as to only parts of them, should caution be exercised. It then becomes very unsatisfactory and imperfect evidence—the lowest grade of evidence. And our statute provides: “That the evidence of the oral admissions of a party ought to be viewed with caution.”

Requested by defendant and ———.

—————, Judge.

You are instructed that the defendant in this case is charged with “knowingly” doing a certain thing, and you are further instructed that, in law, whenever the word “knowingly” is used in connection with the definition of any prohibited act or omission, it means that the person sought to be charged with the offense, at the time it is alleged to have been committed, was actually possessed of and actually had knowledge of the existence of facts which brought this act or omission within the law prohibiting such act or omission.

Requested by defendant and ———.

—————, Judge. [171]

In every crime or offense there must exist a union or joint operation of act and intent, or criminal negligence. The law does not hold a man responsible criminally for an act done without guilty intention, no matter what that act may be. So in this case the law will not hold the defendant criminally responsible for the act charged, unless at the time he committed that act, he had a guilty intention to commit it. If you have a reasonable doubt whether he did

have such guilty intention, you must acquit him.

Requested by defendant and ———.

—————, Judge.

You are instructed that the defendant is by law presumed to be a man of good character in the absence of any evidence to the contrary. Such presumption of good character, coming as it does in aid of the general presumption of innocence is no more to be left out of a view by the jury in their deliberations than is the original presumption of innocence which the law gives him.

The good character of the defendant which the law presumes, is itself a fact in the case. It is a circumstance tending in a greater or less degree to establish defendant's innocence; and it is not to be put aside by the jury in order to ascertain if the other facts and circumstances considered by themselves do not establish his guilt beyond a reasonable doubt, but his good character must be considered by you in determining whether or not the defendant is guilty. And after considering such presumptions of good character, together with all the [172] evidence if the jury entertain a reasonable doubt as to the guilt of the defendant, you must give him the benefit of such doubt and acquit him.

Requested by defendant and ———.

—————, Judge.

Every public offense for which a person may be prosecuted consists of one or more essential elements, and it is necessary for the prosecution to prove to you beyond a reasonable doubt every one of these essential elements, and if they fail to do so the de-

fendant is entitled to a verdict of not guilty, or if from all the evidence you have a reasonable doubt as to any essential element, it is your sworn duty to give the defendant the benefit of such doubt and acquit him.

Requested by defendant and ——.

———, Judge.

You are instructed that a witness false in one part of his testimony is to be distrusted in others, that is to say, the jury may reject the whole testimony of a witness who has wilfully sworn falsely as to a material point and the jury, if it be convinced that a witness has stated what was untrue, not as a result of inadvertence, but wilfully and with the design to deceive, must treat all his testimony with distrust and suspicion.

Requested by defendant and ——.

———, Judge. [173]

In judging of the credibility of the various witnesses who have testified before you in this case and in determining what weight and credit you shall give to their testimony, you have the right, and it is your duty, to take into consideration their interest in the case, if any; their character and conduct; their appearance upon the witness-stand and their manner of testifying; their candor; fairness or intelligence, or lack thereof; their relation to the parties; their bias or impartiality; the strength or weakness of their recollection; the inherent probability or improbability of their statements and all other facts and circumstances appearing at the trial.

You are the sole and exclusive judges of the credit

to be given to the testimony of the different witnesses who have appeared before you, and you are not bound to believe anything to be a fact merely because a witness or any number of witnesses state that such is a fact, provided that you believe from the evidence that such witness or witnesses are mistaken or have knowingly testified falsely.

Requested by defendant and ———.

—————, Judge. [174]

If, after a consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such doubt not to vote for a verdict of "guilty," nor to be influenced in so voting, for the single reason that a majority of the jurors or even all the other jurors should be in favor of the verdict of guilty. The defendant is entitled to the individual opinion of each and every juror and no juror should surrender his opinion merely because the other jurors disagree with him therein so long as he has a reasonable doubt.

This does not mean that you shall not fairly and impartially discuss the whole case together in order that you may agree upon and render a true and just verdict.

Requested by defendant and ———.

—————, Judge.

[Endorsed]: No. 672—Crim. U. S. District Court, Southern District of California, Southern Division. United States, vs. John Grant Lyman. Defendant's Instructions Refused. Filed Dec. 10, 1913. Wm.

M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [175]

*In the District Court of the United States for the
Southern District of California, Southern Division.*

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

Instructions of the Court to Jury.

Gentlemen of the Jury:

The defendant in this case is charged with having placed and caused to be placed in the United States Postoffice in the city of Los Angeles, State of California, to be sent and delivered by the postoffice establishment of the United States, certain letters, for the purpose of executing a scheme to defraud alleged to have been previously devised by him. This scheme is fully set forth and described in the indictment, which has been read to you, and which you will have with you in the jury-room, and which, therefore, need not be recited here.

The indictment contains six counts.

All charge the same scheme to defraud, but each alleges the deposit in the United States mail of a letter different from those set forth in the other counts. [176]

To constitute the offense charged in the first

count, three things are necessary: First, that the defendant devised the scheme therein described; second, that said scheme was one to defraud; third, that said defendant, for the purpose of executing said scheme, placed, or caused to be placed, in the postoffice at Los Angeles, California, to be sent and delivered by said postoffice establishment, the letter in said count described.

If you are satisfied from the evidence, beyond a reasonable doubt, of the existence of the three constituents which I have enumerated, you will find the defendant guilty as charged in said first count. If, however, the evidence fails to so satisfy you of said constituents, or either of them, you will find the defendant not guilty as charged in the first count.

The instructions which I have given you with reference to the first count apply also to the remaining five counts, except, that, in order to justify a conviction on any one of said five counts, the evidence must show, besides the other elements of the offense, that the defendant placed or caused to be placed in said postoffice, to be sent and delivered by said postoffice establishment, the letter mentioned in such count. [177]

The Court further instructs you, that the rule of law applicable to criminal prosecutions for obtaining money or property by false pretenses, namely, that the representation or pretence must be of some existing fact and not a mere expression of opinion or a mere promise as to the future, and that the fraudulent purpose must be something more than an in-

tention not to carry out a promise or contract, does not apply to this case.

The section of the Criminal Code under which this prosecution was brought denounces as a crime the mailing or causing to be mailed of a letter in the execution of a scheme to defraud.

The evil sought to be remedied is always important in determining the meaning of a statute. It is common knowledge that nothing is more alluring than the expectation of receiving large returns on small investments. Eagerness to take the chances of large gains lies at the foundation of all lottery schemes, and, even when the matter of chance is eliminated, any scheme or plan which holds out the prospect of receiving more than is parted with appeals to the cupidity of all.

In the light of this the statute must be read, and so read it includes everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future. Thus, it will also be seen, that one of the significant facts is the intent and purpose to defraud, without which there can be no conviction. [178]

The Court further instructs you, that, if the representations intended to be made as alleged in the indictment were false, but defendant honestly believed them true, then said representations would not be fraudulent. If, however, such representations were false, and defendant, knowing their falsity, or not believing them true, intended they should be made to deceive and induce the persons to whom they were to be made to send or pay money to the Panama

Development Company, then said scheme was one to defraud.

The Court further instructs you, that, while, ordinarily, one person is not answerable for the acts or declarations of another, yet the defendant in a criminal, as well as civil action, is responsible for any act done or representation made by his command or procurement the same as if said act were done or representation made by him personally. The proof of the command or procurement may be direct or indirect, positive or circumstantial.

You are further instructed, with reference to the proof of mailing the letters set up in the indictment, that it is not essential to the commission of the offense charged, that such letters be deposited in the mail by the defendant himself, or even by another acting under his express direction, because a person is equally responsible for the mailing of any particular letter if it is deposited in the postoffice as a natural and probable consequence of any act intentionally done by such person, with knowledge, at the time thereof, that such act will naturally and probably result in the mailing of such letter. [179]

You are further instructed, that a person is responsible for the mailing of any letter if he sets in operation and makes use of an agency which, as he knows at the time, would according to its established and regular course, carry such letter through the mail to the person or persons to whose attention he designed and intended such letter should be brought.

You are further instructed, that the official postmark of the Los Angeles postoffice, appearing on

some of the letters set up in the indictment, and which have been introduced in evidence, are *prima facie* proof that said letters were mailed at said postoffice.

Evidence has been offered of the concealment, escape and flight of the defendant. On this subject, the Court instructs you, that acts of concealment, escape or flight by an accused are competent to go to the jury as tending to establish guilt, but they are not to be considered as alone conclusive, or as creating a legal presumption of guilt, but only as circumstances to be considered and weighed in connection with other proof with the same caution and circumspection which their inclusiveness, when standing alone, requires.

The Court further instructs you, that the presumption of guilt arising from the concealment, escape or flight of the accused is a presumption of fact—not of law—and is merely a circumstance tending to increase the probability of defendant's guilt, which is to be weighed by the jury like any other evidentiary circumstance.

You are further instructed, that it is not incumbent upon the Government to prove every element of the scheme to defraud [180] alleged in the indictment, but it is sufficient in that particular if a scheme to defraud is shown to have been devised, and, that such scheme is substantially that described and set out in the indictment.

The Court further charges you, that, while you must follow its instructions as to the law of the case,

you are the sole judges of the facts and the credibility of witnesses, and, if the Court expresses an opinion or comments either upon the facts or credibility of witnesses, you are not bound by such opinion or comment, but should exercise your own independent judgment on such matters.

Among the circumstances to be considered by you in passing upon the credibility of witnesses are, so far as shown by the evidence, their character and conduct, their relation to the case and its parties, their motives, their manner, attitude and demeanor upon the witness stand, their fairness and intelligence, their bias or impartiality, the strength or weakness of their recollection, the reasonableness of their statements, and all other facts in the case. You should also look to the interests which the witnesses have in the suit or its result.

The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege, and his testimony is to be treated like the testimony of any other witness,—that is, it is for you to say, remembering the circumstances just enumerated as bearing upon the credibility of witnesses, whether or not he told the truth. The deep personal interest which he has in the result of the suit should be considered by the jury in determining [181] how far and to what extent his testimony is worthy of credit.

If any of the witnesses are shown knowingly to have testified falsely on this trial touching material matters here involved, the jury are at liberty to reject the whole or any part of their testimony.

You are instructed that the defendant in this case is entitled to the individual opinion of each member of this jury and that no member of this jury should vote for a conviction of the defendant because of the opinion of the other members of the jury so long as he has a reasonable doubt as to the guilt of the defendant, but this does not mean that you should not consult together and try to agree upon a verdict.

The Court further instructs you, that the burden of proof is on the Government, and that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt, and that this rule applies to every material element of the offense charged. The Court further instructs you, that a reasonable doubt is one which is reasonable in view of all the evidence, and if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt. [182]

You may acquit or convict the defendant on one or more or all of the counts of the indictment as the evidence requires. If you acquit him on all the counts, your verdict will be general verdict of not guilty. If you convict him on all of the counts, your

verdict will be a general verdict of guilty as charged in the indictment.

[Endorsed]: No. 672—Crim. U. S. District Court, Southern District of California, Southern Division. The United States of America, vs. John Grant Lyman. Instructions of the Court. Filed December 10th, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [183]

Your Honor, we would like to be enlightened in regard to the alleged intent of the defendant to defraud. Are we to consider his intent at the time of organizing the Panama Development Company, or at the time the several letters in the indictment were written, or mailed, or at any subsequent time?

[Endorsed]: 672—Crim. Filed Dec. 10, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [184]

In the District Court of the United States for the Southern District of California, Southern Division.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,
 Plaintiffs,
 vs.
 JOHN GRANT LYMAN,
 Defendant.

Further Instructions of the Court to Jury.

Gentlemen of the Jury:

Replying to the question which you have propounded to me, I instruct you, that the mailing of

a letter without the fraudulent intent would be no crime; if, however, the evidence satisfies you, beyond a reasonable doubt, that the fraudulent intent was in the mind of the defendant before the mailing of any one of the letters mentioned in the indictment, then, as to the count in which that letter is set forth, the fraudulent intent is sufficiently established.

[Endorsed]: No. 672—Crim. U. S. District Court, Southern District of California, So. Div. U. S. vs. J. G. Lyman. Further Instruction of the Court. Filed Dec. 10, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [185]

*In the District Court of the United States for the
Southern District of California, Southern Division.*

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant, John Grant Lyman, guilty as charged in the first count of the indictment, and not guilty as charged in the second, third, fourth, fifth and sixth counts of the indictment.

Los Angeles, Cal., Dec. 10th, 1913.

S. M. GODDARD,

Foreman.

[Endorsed]: No. 672—Crim. United States District Court, Southern District of California, Southern Division. United States of America vs. John Grant Lyman. Verdict. Filed December 11th, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [186]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant.

Motion for a New Trial.

Comes now the defendant, John Grant Lyman, and moves this Honorable Court that he be granted a new trial, and for grounds of this motion alleges:

A. That the Court misdirected the jury in questions of law.

B. That the Court erred in decisions of questions of law arising during the course of the trial.

C. That the verdict is contrary to the law.

D. That the verdict is contrary to the evidence.

E. That the verdict is contrary to the law and the evidence.

F. That the evidence is insufficient to justify the verdict.

G. That the Court erred in refusing each and

every instruction requested by the defendant and refused by the Court.

H. That the Court erred in giving each and every instruction requested by the prosecution and given by the Court.

I. That the Court erred in modifying each and every instruction requested by the defendant and modified by the Court and thereafter given as modified by the Court.

PAUL SCHENCK,
Attorney for Defendant. [187]

[Endorsed]: Original. #672—Crim. In the District Court of the United States, in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John Grant Lyman, Defendant. Motion for a New Trial. Rec'd Copy of Within Motion This 9th Day of January, 1914. Edward A. Regan, Special Asst. Paul W. Schenck, Criminal Law, Mason Opera House Building, Los Angeles, California, Attorney for Defendant. Filed January 9, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [188]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN GRANT LYMAN,
Defendant.

Motion in Arrest of Judgment.

Comes now the defendant, John Grant Lyman, by Paul W. Schenck, his attorney, and moves the Court to arrest judgment herein, and for grounds of this motion alleges:

A. That the facts stated in the said indictment, and in Count I, in said indictment, do not constitute a public offense or public offenses against the United States or the laws thereof.

B. That the facts stated in said indictment, and in Count I, in said indictment, do not constitute a violation of any statute or statutes of the United States.

PAUL W. SCHENCK,
Attorney for Defendant.

[Endorsed]: Original. 672—Crim. In the District Court of the United States, in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John Grant Lyman, Defendant. Motion in Arrest of Judgment. Rec'd Copy of Within This 9th Day of Jan., 1914. Edward A. Regan, Special Assistant. Paul W. Schenck, Criminal Law, Mason Opera House Building, Los Angeles, California. Filed January 9, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [189]

Copy Judgment.

At a stated term, to wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof in the city of Los Angeles, on Friday, the 9th day of January, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable OLIN WELL BORN, District Judge.

No. 672—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant.

This cause having come on at this time for the sentence of the defendant; E. A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, appearing as counsel for the United States; defendant being present in custody of the U. S. Marshal, with his counsel, Paul W. Schenck, Esq.; I. Benjamin being present as shorthand reporter of the proceedings, and acting as such; and a motion for a new trial having been presented and filed by Paul Schenck, Esq., counsel for the defendant, and said motion for a new trial having been argued, in support thereof, by Paul Schenck, Esq., and, in opposition thereto, by E. A. Regan, Esq., Special Assistant to the U. S. Attorney

for the Southern District of California, counsel for the United States, and, in reply, by Paul Schenck, Esq., counsel for the defendant, and said motion having been submitted to the Court for its consideration and decision, it is thereupon ordered that said motion be, and the same hereby is, denied, to which ruling of the Court an exception is noted by Paul Schenck, Esq., counsel for the defendant, and entered herein; whereupon a [190] motion in arrest of judgment is presented and filed by Paul Schenck, Esq., counsel for defendant, and it is ordered that said motion in arrest of judgment be, and the same hereby is, denied. Thereupon, the defendant having been called for sentence, and statements having been made by said defendant in mitigation of sentence; by E. A. Regan, Esq., Special Assistant to the U. S. Attorney for the Southern District of California, counsel for the United States, concerning sentence; and by Paul Schenck, Esq., counsel for the defendant, in mitigation of sentence, the Court thereupon pronounces judgment herein as follows: The Judgment of the Court is that John Grant Lyman, defendant herein, be imprisoned in the State Penitentiary, at San Quentin, California, for the term of one (1) year and three (3) months; and it is ordered that judgment accordingly be entered herein. Thereupon, on motion of Paul Schenck, Esq., counsel for defendant, it is ordered that a stay of execution of judgment herein for fifteen (15) days be, and the same hereby is granted defendant; and on like motion of Paul Schenck, Esq., counsel for defendant, it is ordered that defendant be, and he hereby is

granted fifteen (15) days within which to file his bill of exceptions or take such other steps as he may be advised. Defendant is remanded to the custody of the U. S. Marshal. [191]

In the District Court of the United States for the Southern District of California, Southern Division.

No. 672—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOHN GRANT LYMAN,

Defendant.

**Certificate of Clerk, U. S. District Court, to
Judgment-roll.**

I, Wm. M. Van Dyke, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a true copy of the Judgment entered in the above-entitled action, and I further certify that the foregoing papers hereto annexed constitute the Judgment-roll in said action.

Attest my hand and the seal of said District Court, this 12th day of January, A. D. 1914.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Murray C. White,

Deputy Clerk.

[Endorsed]: No. 672—Crim. In the District Court of the United States for the Southern District

of California, Southern Division. The United States vs. John Grant Lyman. Judgment-roll. Filed Jan. 12th, 1914. Wm. M. Van Dyke, Clerk. By Murray C. White, Deputy Clerk. Recorded Minute-book No. 17 page. [192]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN GRANT LYMAN,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that heretofore the Grand Jury of the United States, in and for the Southern District of California, did file and return into the above-entitled court its indictment against the defendant, John Grant Lyman, and thereafter the said John Grant Lyman appeared in said court, and after having demurred to the said indictment, and having duly pleaded, as shown by the record herein, and the cause being at issue, the same came on for trial before the Honorable Olin Wellborn, District Judge, and a jury duly impaneled, the United States being represented by Edward A. Regan, Esq., Special Assistant United States Attorney, and the defendant, John Grant Lyman, being represented by Paul W. Schenck, Esq., the following proceedings were had:

**Testimony of Celora Martin Stoddard, for
Plaintiff.**

CELORA MARTIN STODDARD, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is Celora Martin Stoddard. I live at Phoenix, Arizona. My business is incorporating. I am the secretary and treasurer of the Stoddard Incorporating Company, Phoenix, Arizona. During 1911 I had some correspondence with the defendant.

Q. I show you this letter and ask you whether or not you received this letter through the mail?

A. Yes, sir.

Mr. REGAN.—I now offer in evidence this letter, if your [193] Honor please.

Mr. SCHENCK.—We object to that as incompetent, irrelevant, immaterial and no foundation laid, in this that it is not connected with the defendant in any way.

The COURT.—Will you have it marked for identification?

Mr. REGAN.—Yes, sir. I will ask that this letter, dated April 18th, 1911, addressed to Stoddard Incorporating Company, Phoenix, Arizona, and signed J. G. Lyman, be marked U. S. Exhibit 1, for identification.

Q. I will show you this letter and ask you whether or not you wrote that letter?

(It was stipulated between the United States Attorney and counsel for the defendant that throughout the trial each ruling on the admission of evidence adverse to the contention of the defendant may be deemed excepted to for the purpose of the record, and the exception preserved.)

A. I dictated the letter. That is my signature. The letter was mailed afterward in the ordinary course of business.

Mr. REGAN.—I will now offer this letter in evidence and ask that it be marked U. S. Exhibit 2.

Mr. SCHENCK.—To which we object on the ground that it is incompetent, irrelevant, immaterial and no foundation laid, and upon the further ground, if your Honor please, that at this time we desire to make an objection, which will probably be before the court a great many times, and that is this: we offer to show at this time that every document and paper, either of the Panama Development Company, or of this defendant, are in the hands of the Government at this time by virtue of no power or process of this court or of any other court, but simply seized by the officers of the Government without any right or authority, in violation of both the fourth and fifth amendments of the Constitution of the United States, and that each of the documents and papers [194] thus seized—maps, pamphlets, papers—were seized, I say, from the possession of the defendant himself or from the possession of the Panama Development Company and that they cannot be used in this court as evidence for the reason that they

(Testimony of Celora Martin Stoddard.)

are here in court in violation of the Constitution with reference to unreasonable searches and seizures, and in violation of the other amendment, that no person shall be obliged to produce evidence or furnish evidence against himself. If there is any dispute on the question of whether the papers were secured by process of any court whatsoever, we offer at this time to prove that they were not. This Court knows that there has no process been issued; it is a matter of judicial knowledge, and this Court has issued no process to warrant their seizure.

It was stipulated here, that the letter might be admitted in evidence temporarily, subject to a motion to strike out.

Q. (By Mr. REGAN.) I show you a letter dated April 28th, 1911, addressed to Stoddard Incorporating Company, Phoenix, Arizona, signed John D. Lyman, and ask you whether or not you received that letter.

A. Yes, that was received in our office.

Mr. REGAN.—I now offer that letter in evidence.

Mr. SCHENCK.—Same objection.

Mr. REGAN.—I suppose your Honor will exclude it?

The COURT.—Yes, for the present.

Mr. REGAN.—I will now ask that the letter be marked U. S. Exhibit 3 for identification.

Mr. REGAN.—I will show you this letter, dated May 26th, 1911, written on paper headed "Panama Development Company, 216 Mercantile Place, Los

(Testimony of Celora Martin Stoddard.)

Angeles, California, May 25, 1911," addressed to the Stoddard Incorporating Trust Company, Phoenix, Arizona, and signed Panama Development Company by L. R. Smith, and ask you whether or not you received that letter? [195]

A. Yes, sir; that was received at our office.

Mr. REGAN.—I now ask that the letter just referred to be marked U. S. Exhibit A for identification.

(Letter marked United States Exhibit 4 for identification.)

Mr. REGAN.—I show you a letter on paper headed "Panama Development Company, 216 Mercantile Place, Los Angeles, July 24, 1911," addressed to Stoddard Incorporating Trust Company, Phoenix, Arizona, and signed Panama Development Company by Lyman, and ask you whether or not you received that letter?

A. Yes, sir, received at our office.

The COURT.—Signed by whom?

Mr. REGAN.—By Lyman.

The COURT.—Lyman.

Q. (By Mr. REGAN.) That came through the mail? A. Yes, sir.

Mr. REGAN.—I ask that the letter just referred to by the witness be marked United States Exhibit 5 for identification.

(Letter marked United States Exhibit 5 for identification.)

Q. (By Mr. REGAN.) I now show you a letter on paper headed "Stoddard Incorporating Com-

(Testimony of Celora Martin Stoddard.)

pany, Isaac P. Stoddard, President, Phoenix, Arizona, Celora M. Stoddard, Secretary and Treasurer," dated the 26th day of July, 1911, addressed to the Panama Development Company, 216 Mercantile Place, Los Angeles, California, and signed Celora M. Stoddard, Secretary. Did you dictate that letter in the ordinary course of business? A. Yes, sir.

Q. Was it mailed? A. Yes, sir.

Mr. SCHENCK.—To whom is that addressed?

Mr. REGAN.—Panama Development Company. I now offer this letter in evidence and ask that it be marked United States Exhibit 6 for identification. [196]

Mr. SCHENCK.—You don't offer it?

Mr. REGAN.—Well, not in evidence. I offer it for identification.

(Letter marked United States Exhibit 6 for identification.)

Mr. REGAN.—I show you this letter on paper of the Panama Development Company, 216 Mercantile Place, between Fifth and Sixth Streets, Los Angeles, August 9, 1911, Stoddard Incorporating Company, Phoenix, Arizona, signed Panama Development Company by L. R. Smith, and ask you whether or not that was received by you?

A. Received at our office.

Mr. REGAN.—I now offer that letter for identification and ask that it be marked United States Exhibit 7 for identification.

(Letter marked United States — 7 for identification.)

Testimony of John Redpath, for Plaintiff.

JOHN REDPATH, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I live at 718 Alvarado Street, Los Angeles. I am acquainted with the defendant John Grant Lyman. I have seen him write his name frequently.

Q. I show you this letter United States Exhibit 1 for identification and ask you whether or not in your opinion you can state whose signature that is?

A. That is Dr. Lyman's—the defendant here.

Mr. REGAN.—I now offer United States Exhibit 1 for identification in evidence and ask that it be marked United States Exhibit 1.

Mr. SCHENCK.—Objected to on the ground that no foundation is laid.

The COURT.—What do you mean?

Mr. SCHENCK.—It is a mere matter of opinion. I don't [197] think that is entitled to be admitted on a mere opinion. The objection goes to the sufficiency of the foundation, if your Honor please.

Q. From the writing which you have seen the defendant do, do you feel that you can express an opinion on handwriting as to whether or not it is his?

A. I would say it is his handwriting.

Q. Do you feel that you can express an opinion as to whether or not — writing is his writing?

A. Yes, sir.

The COURT.—You know his handwriting, in other words, do you?

(Testimony of John Redpath.)

A. Yes, sir.

The COURT.—Very well. Go on. The objection is overruled.

Mr. SCHENCK.—That becomes Exhibit 1 now?

Mr. REGAN.—Yes. This letter reads as follows:

U. S. Exhibit No. 1—Letter, April 18, 1911, Lyman to Stoddard Incorporating Co.

HOTEL ALEXANDRIA.

Los Angeles, April 19, 1911.

(In pencil:) Credit attach "*wire if not paid.*"

S. I. Co. RECEIVED APR. 20, 1911.

CK 50

Credit 50—P C hg 50—P

1613.

Answered Apr. 21, 1911.

Stoddard Incorporating Co.,

Phoenix, Arizona.

Gentlemen:

Please incorporate a company, entitled

PANAMA DEVELOPMENT COMPANY.

with an authorized capitalization of \$1,000,000.00, par value of shares \$10.00, date of annual meeting of stockholders first Tuesday [198] in February:

As to the names of the directors, cannot you temporarily supply three, as am not yet sure who will act and so would prefer deferring naming them for the present? Enclosed herewith find check for \$50.00 to cover.

Shall hope to hear from you in a few days in response to mine of April 17th, regarding the Wyo-

ming Oil & Developing Company, which we want to transform into the Wyoming Oil & Refining Company and get part of the property which has been deeded to the Wyoming Oil & Development Co., and so recorded in Wyoming, into the possession of the new Wyoming Oil & Refining Co.

Yours very truly,

J. G. LYMAN.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 1 for identification. U. S. Exhibit 1. Filed October 17, 1913. Wm. H. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—Q. I now offer in evidence United States Exhibit 2 for identification, which is the letter which the witness Stoddard testified was a reply to United States Exhibit 1.

To which introduction the defendant objected, on the ground that it was incompetent by reason of its method of production. The Court overruled the objection, and to such ruling the defendant then and there excepted. It was here stipulated between the United States Attorney and counsel for the defendant, that the same objection might apply to all letters presented to the witness Stoddard for identification.

United States Exhibit 2 reads as follows:

**U. S. Exhibit No. 2—Letter, April 21, 1911, Stoddard
to Lyman.**

STODDARD INCORPORATING COMPANY.

Isaac T. Stoddard, President.

Phoenix, Arizona.

Celora Martin Stoddard,

Secretary and Treasurer, [199]

21st April, 1911.

Mr. J. G. Lyman,

Hotel Alexandria,

Los Angeles, California.

Dear Sir:

Please accept our thanks for your valued favor of the 19th instant, enclosing cheque for \$50 in payment for the incorporation of the Panama Development Company, which has been duly received.

We note your suggestion that we proceed with the incorporation of the company and furnish a dummy board of three directors. It is contrary to our regulations to furnish such dummy directors and it really is of no advantage to a company inasmuch as the corporation cannot carry on any business through anyone but its temporary board. There would have to be the meeting of such dummy board of directors at which their successors would be elected. Therefore, there really is no advantage in proceeding in this way.

Be assured that upon receipt of your further instructions and the names of the parties you wish to have serve as the first board of directors, we will

immediately proceed with the incorporation of your company.

We trust that you have received our reply to your letter of the 17th instant and that our efforts in your behalf are of service to you.

Awaiting your further valued favor, we remain,

Yours very respectfully,

CELORA M. STODDARD.

Diet. S/P.

[Endorsed]: 672-Crim. U. S. vs. Lyman. U. S. Exhibit 2 for Identification. U. S. Exhibit 2. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I now offer U. S. Exhibit 3 for identification, [200] and ask that it be marked U. S. Exhibit 3.

(Mr. REGAN reads said Exhibit to the jury as follows:)

U. S. Exhibit No. 3—Letter April 28, 1911, Lyman to Stoddard Incorporating Co.

HOTEL ALEXANDRIA.

Los Angeles, April 28, 1911.

Stoddard Incorporating Co.,

Phoenix, Arizona.

Gentlemen:

On April 19th, I sent you check for \$50. together with papers, requesting the incorporation of the PANAMA DEVELOPMENT COMPANY. Will

(Testimony of John Redpath.)

you kindly proceed with the same and elect as directors:

E. A. Lynn

W. H. Barry

and they will elect the third member here.

Yours very truly,

JOHN G. LYMAN.

Incorp. Co. Apr. 29, 1911 (In blue pencil).

[Endorsed]: U. S. vs. Lyman. U. S. Exhibit 3 for identification. U. S. Exhibit 3. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Q. (By Mr. REGAN.) I show you United States Exhibit 5 for identification and ask you whether or not in your opinion the defendant signed that letter, signed Lyman.

A. In my opinion that is his writing.

Mr. REGAN.—We now offer in evidence United States Exhibit 5 for identification and ask that it be marked United States Exhibit 5. It reads:

U. S. Exhibit No. 3—Letter July 24, 1911, Panama Development Co. to Stoddard Incorporating Trust Co.

PANAMA DEVELOPMENT COMPANY.

216 Mercantile Place.

Between Fifth and Sixth Streets.

Los Angeles, July 24, 1911.

Stoddard Incorporating Trust Co.,

Phoenix, Arizona, [201]

Gentlemen:—

We would like to reduce our capital from

\$1,000,000 to to \$100,00. We only have \$50,000 paid in. What are the necessary steps to take and what will it cost?

Very truly yours,

PANAMA DEVELOPMENT COMPANY.

By LYMAN.

[Endorsed]: 672-Crim. U. S. vs. Lyman. U. S. Exhibit 5 for Identification. U. S. Exhibit 5. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I now offer in evidence United States Exhibit 6 for identification which the witness Stoddard testified was an answer to United States Exhibit Number 5.

The COURT.—Very well.

(Mr. REGAN reads said letter as follows:)

**U. S. Exhibit No. 6—Stoddard to Panama
Development Co.**

STODDARD INCORPORATING COMPANY.

Isaac T. Stoddard, President.

Phoenix, Arizona.

26th July, 1911.

Celora Martin Stoddard,

Secretary and Treasurer, Panama Development
Company,

216 Mercantile Place,

Los Angeles, California.

Gentlemen:

Your letter of the 24th instant is this morning at hand.

Replying to your inquiry, we have to say that in

order to legally change the Articles of Incorporation of an Arizona Company and decrease the capital stock, it will be necessary that a resolution to such effect be passed at a stockholders' meeting by the affirmative vote of a majority of the issued and outstanding capital stock of the corporation. A certificate of such amendment [202] duly signed by the President and attested by the Secretary of the company, should then be forwarded to us for filing. We are enclosing herewith a blank form of amendment for your use.

The average cost of an amendment is \$35. which includes the several filings, recording, legal publication and one certified copy of the amendment.

We would be pleased to attend to the holding of your meeting, after the same has been properly called, on receipt of proxies and such other data as is mentioned in the enclosed meeting-letter. You will note that our charge for holding meetings here by proxy is very reasonable.

Of course you understand that the notice for the meeting to authorize the amendment of your Articles of Incorporation should state the purpose for which the meeting is to be held.

Assuring you that your instructions will be carried out in detail and that your meeting and amendment will receive prompt and careful attention when entrusted to us, we remain,

Yours very respectfully,

CELORA M. STODDARD,

Secretary.

Dict. S/L.

Enc.

(Testimony of John Redpath.)

[Endorsed]: 672-Crim. U. S. v. Lyman. U. S. Exhibit 6 for Identification. U. S. Exhibit 6. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Cross-examination by Mr. SCHENCK.

I have seen Dr. Lyman write a great many times. Have seen Lyman sign his name otherwise than J. G. Sometimes John G. No doubt in my mind that Dr. Lyman signed U. S. Exhibits 1 and 3. There is a difference in the handwriting between Exhibits 1 and 3.

Q. No doubt about it at all? You don't see any difference [203] in the handwriting at all—any very decided difference?

A. There is a difference in the handwriting.

Q. A very decided difference in the handwriting?

A. Some.

Q. Does that cause you to hesitate or doubt in swearing that your opinion is that he signed both of them?

A. His signatures have been erratic—the signatures that I have seen—of different kinds.

Q. And that accounts, in your opinion, for the decided and marked difference which you see in the two signatures there?

A. There is a similarity in the writing.

Q. Don't you know as a matter of fact that the one signed "J. G. Lyman" was not signed by the defendant J. G. Lyman, the defendant in this case, at all? A. No; I do not.

Q. You didn't see him sign either one, did you?

(Testimony of John Redpath.)

A. No, sir; I didn't see him sign either one of them.

Q. Was the erratic handwriting which you say you noticed a characteristic of his writing? Did it bring about as broad a difference as you see there?

A. Well, I don't know about as broad a difference between the two, but there has been a similarity in the "L's and "Y" and "J." After comparing them my opinion is not shaken.

Mr. REGAN.—I now offer in evidence a certified copy of the articles of incorporation of the Panama Development Company.

Mr. SCHENCK.—Objected to on two grounds: First, on the ground that they are at variance from the incorporation alleged in the indictment, in this: That the indictment charges that this defendant on or about the 1st day of May had devised a scheme to defraud, and that that scheme consisted, among other things, that he would form a corporation for \$50,000 capital under [204] the laws of Arizona. The copy of articles of incorporation offered in evidence here show an incorporation which came to life and being in April, 1911, or prior to the date of the alleged devising. And, furthermore, upon the ground that there is a variance in this: That the capital stock of this corporation is alleged to be one million dollars. My principal contention is that the indictment says that the scheme that he devised prior thereto was that he would form a corporation. This cannot be the one then.

It was here stipulated that the reporter may copy

in his records as though they had been read, all documents offered in evidence.

(Exhibit 8 is read into the record as follows:)

**U. S. Exhibit No. 8—Certified Copy Articles of
Incorporation of Panama Development Co.**

TERRITORY OF ARIZONA.

Office of the

TERRITORIAL AUDITOR.

United States of America,

Territory of Arizona,—ss.

I, G. A. Mauk, Territorial Auditor of Arizona, do hereby certify that the annexed is a true and complete transcript of the ARTICLES OF INCORPORATION OF PANAMA DEVELOPMENT COMPANY which were filed in this office on the twenty-ninth day of APRIL A. D. 1911, at 1:30 o'clock P. M. as provided by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal. Done at the city of Phoenix, the Capital, this 29th day of APRIL A. D. 1911.

[Seal]

G. A. MAUK,
Territorial Auditor.

ARTICLES OF INCORPORATION.

BE IT KNOWN, That we, Celora M. Stoddard and M. La Rue, do hereby associate ourselves together and form a corporation under Chapter II of Title XIII, Revised Statutes of Arizona, 1901, and [205] acts amendatory thereto, and adopt the following Articles of Incorporation.

ARTICLE I. The name of the corporation is

PANAMA DEVELOPMENT COMPANY and its principal place of transacting business in Arizona is Phoenix. Offices may be established, business transacted and meetings of stockholders and directors held at such places within or outside of Arizona as the By-laws of the Company shall provide.

ARTICLE II. The general nature of the business proposed to be transacted is to make contracts; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell or otherwise dispose of, pledge, mortgage, hypothecate and deal in mines, mining claims, mineral lands, coal lands, oil lands, timber lands, water and water rights and other property, both real and personal and to work, explore, operate and develop the same, and to deal in the products and by-products thereof; to purchase, lease, or otherwise acquire, erect, own, operate and sell smelting and other ore reduction works, oil refineries, sawmills, power plants, railroads and tramways to lead from the company's principal works, and steam electric and motor railroads to serve as common carriers and otherwise outside the territory of Arizona; to do a general manufacturing and mercantile business, to own, handle and control letters patent and inventions; to own, cancel and reissue shares of its own capital stock and to own and vote shares of other corporations; to issue bonds, notes and other evidences of indebtedness and to secure the payment of the same by mortgage, deed of trust or otherwise; to act as agent, trustee, broker, or in any other fiduciary capacity, and to borrow and loan money; and in general to do and perform such acts and things

and transact such business, not inconsistent with law, in any part of the world, as the Board of Directors may deem to the advantage of the corporation.
[206]

ARTICLE III. The amount of the authorized capital stock of the corporation is ONE MILLION DOLLARS, divided into ONE HUNDRED THOUSAND shares of the par value of TEN dollars, each, which shall be paid in, at such time as the Board of Directors may designate, in cash, real or personal property, services, lease, option to purchase, or any other valuable right or thing, for the uses and purposes of the corporation, and all shares of capital stock, when issued in exchange therefore, shall thereupon and thereby become and be full-paid the same as though paid for in cash at par, and shall be non-assessable forever, and the judgment of the directors as to the value of any property, right or thing acquired in exchange for capital stock shall be conclusive.

ARTICLE IV. The time of the commencement of the corporation shall be the day these articles are filed in accordance with law, and the termination thereof shall be twenty-five years thereafter, with privilege of renewal and right of perpetual succession as now provided by law.

ARTICLE V. The affairs of this corporation shall be conducted by a Board of not less than three nor more than fifteen Directors, by whom a President and Vice-President shall be elected by and from among the Stockholders and a secretary and treasurer appointed. The Directors shall be elected on

the first Tuesday in February of each year. Until their successors are elected and qualified, the following named persons shall be the Directors and Officers: E. A. Lynn, W. H. Barry, M. La Rue.

ARTICLE VI. The Directors shall adopt by-laws for the government of the corporation and may amend the same. They shall have power to fill vacancies occurring in the Board from any cause, and to appoint from among their number an executive committee which, to the extent provided by resolution or by the said by-laws, shall have and exercise the powers granted the Directors by these articles.
[207]

ARTICLE VII. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself is SIX HUNDRED SIXTY THOUSAND Dollars.

ARTICLE VIII. The private property of the Stockholders of the Corporation shall be forever exempt from corporate debts of any kind whatsoever.

IN WITNESS WHEREOF, we hereto affix our signatures this 29th day of April, 1911.

CELORA M. STODDARD. (Seal)

M. LA RUE. (Seal)

Territory of Arizona,
County of Maricopa,—ss.

Before me, M. A. Pickett, a Notary Public in and for the county and territory aforesaid, on this day personally appeared Celora M. Stoddard and M. La Rue, known to me to be the same persons who signed the foregoing instrument, and acknowledged to me

that they executed the same for the uses and purposes therein mentioned.

Given under my hand and seal of office this 29th day of April, 1911.

My commission will expire on the 16th day of April, 1914.

(Notarial Seal)

M. A. PICKETT,
Notary Public.

Territory of Arizona,
County of Maricopa,—ss.

I, C. F. Leonard, County Recorder in and for the county and territory aforesaid, hereby certify that I have compared the foregoing copy with the original Articles of Incorporation of PANAMA DEVELOPMENT COMPANY filed and recorded in my office on the 29th day of April, 1911, and that the same is a full, true and correct copy of such original and of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE, this 29th day of April, [208] 1911.

C. F. LEONARD,
County Recorder.
By V. L. Vaughn,
Deputy.

Filed in the office of the Territorial Auditor of the Territory of Arizona this 29th day of April, A. D. 1911, at 1:30 P. M., at request of Stoddard Incorporating Company whose postoffice address is Phoenix, Arizona.

G. A. MAUK,
Territorial Auditor.

Copy furnished for certification compared G. B. to S. A.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 8. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

**Testimony of Celora M. Stoddard, for Plaintiff
(Recalled).**

CELORA M. STODDARD, recalled, testified as follows on direct examination:

Q. (By Mr. REGAN.) Did you prepare papers in reference to the incorporation of the Panama Development Company?

A. Our office—yes, sir.

Q. And who were the incorporators of that?

A. Myself and M. La Rue. I received payment for this work.

Q. From whom? A. Lyman, I suppose.

Cross-examination.

(By Mr. SCHENCK.)

Q. You mean by that that you received pay for your work by the check that you mentioned in a letter there? [209] A. Yes, sir.

Q. That is all you know about it? A. Yes, sir.

Q. You never saw Lyman personally, did you?

A. No, sir.

Q. You don't know whether it came from John Grant Lyman or where it came from except as specified in that letter? A. Yes, sir.

Mr. SCHENCK.—That is all.

(Recess of 5 minutes.)

Testimony of Hernan de la Guardia, for Plaintiff.

HERNAN DE LA GUARDIA, called on behalf of the United States, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. REGAN.)

My full name is Hernan de la Guardia. I live in the city of Panama. I am 27 years of age. I have been engaged in clerical work since I returned from college. I attended the University of Wisconsin for two and a half years. I followed an agricultural course while there. I returned to Panama in February, 1909. I obtained a position in a bank—in the Panama Banking Company at a salary of \$75.00 per month. In 1911 I was a clerk in the Attorney General's office at a salary of \$75.00. The Attorney General is my father. I did not ever hold out or advertise as an expert in agricultural matters. I know Dr. Lyman. I met the Doctor in Panama in my father's office. The Doctor came into the office one morning to the Attorney General's office, and he had a letter of introduction to my father, who was at that time Attorney General, and my father is not conversant with English, so he told me to attend to the doctor. [210] That is how I met Dr. Lyman. After meeting the doctor I spent some time in his company. I went out with the doctor and showed him around to do some shopping. I introduced him to Mr. Quelquejeu.

Q. Now did you have any discussion with him in reference to lands in Panama?

(Testimony of Hernan de la Guardia.)

A. The doctor stated to me generally that he was interested in lands down there. He made inquiry about land. The Doctor said as near as I can recollect that he was interested in Chiriqui lands, especially, and that is how I came to take him to Mr. Quelquejeu, because my father suggested that I take him there, as Mr. Quelquejeu was well acquainted with Chiriqui conditions and land there. Lyman stated he wanted to obtain some options on land for the purpose of buying land, I imagine, later on. He wanted to get options on private land. I can't remember what particular piece of land he wanted.

Mr. REGAN.—You discussed different tracts of land down there, different sections, different parts of Panama? A. Yes, sir.

Q. Now did Dr. Lyman while he was down there say anything to you about your representing him down in Panama?

A. Yes, sir. Dr. Lyman told me he intended to form a company here in the United States for acquiring and exploiting and developing land in Panama, and that if in such a case he succeeded in forming the company he would appoint me as his representative there and I told him I would consider the matter. He told me to look up private properties. Lyman seemed more interested in Chiriqui because he had heard more of it, and because Chiriqui is the best agricultural section of the county. He did not seem familiar with Panama and did not tell me he had any options on any land in Panama, or had purchased any there.

(Exhibit 9 is now offered in evidence and reads as follows:) [211]

**U. S. Exhibit No. 9—Letter, March 30, 1911, Lyman
to de la Guardia.**

THE ST. CHARLES.

Alfred S. Amer. & Co., Ltd., Proprietors.
New Orleans, La.

March 30th, 1911.

HERNAN de la GUARDIA,
City of Panama, Panama.

My dear Mr. Guardia:—

Was sorry not to have seen you again before leaving, but shall hope to have that pleasure before many months.

I hope you will be able to obtain the map of the proposed railroad and if you can make a rough sketch of same and send it to me, together with a diagram showing the relation of that property in connection with the same, I will send you a check to cover the payment required on the option we discussed.

I hope to send you soon a copy of the Charter I would like to obtain in Panama. Will you please ascertain just how much land there is in that point of ground opposite the city which we considered as a proposed site as well as the price of the same.

Address me until further notice Alexandria Hotel, Los Angeles, Cal.

With regards to your father, believe me,

Very truly yours,

JOHN G. LYMAN.

(Testimony of Hernan de la Guardia.)

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 9. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I show you the letter on the stationery of the Hotel Alexandria, “Los Angeles, April 8, 1911, Sr. Hernan de la Guardia, city of Panama, Panama, Dear Mr. Guardia,” signed “John G. Lyman,” and I ask you whether or not you received that letter. A. Yes, sir. [212]

Q. Through the mail? A. Yes, sir.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 10.

(Said letter so offered in evidence is marked United States Exhibit 10, and is as follows):

U. S. Exhibit No. 10—Letter, April 8, 1911, Lyman to de la Guardia.

HOTEL ALEXANDRIA.

Los Angeles, April 8, 1911.

Senor Hernan de la Guardia,

City of Panama,

Panama.

Dear Mr. Guardia:

Shall hope to hear from you at an early date regarding that land proposition, together with a map of the proposed railroad, and as soon as you furnish me with this, will send you sufficient money, to either tie it up under option or make a purchase outright.

Also let me know just how much land there is in that point of land which we thought would make a good site for a Casino, and if possible ascertain what the property can be purchased for.

(Testimony of Hernan de la Guardia.)

Do you know how much is now being paid for the lottery privilege and how long it has to run.

With regards to your father,

Sincerely yours,

JOHN G. LYMAN.

Address c/o the above hotel.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 10. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Q. (By Mr. REGAN.) I now show you a letter written on stationery stamped "Hotel Alexandria," dated "Los Angeles, April 14, 1911," and signed "John G. Lyman," and ask you whether you received [213] that letter?

A. I did receive the letter.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 11.

(Said letter so offered in evidence is marked United States Exhibit 11, and is read in evidence as follows:)

U. S. Exhibit No. 11—Letter, April 14, 1911, Lyman to Hernan de la Guardia.

HOTEL ALEXANDRIA.

Los Angeles, April 14, 1911.

Senor Hernan de la Guardia,

City of Panama,

Panama.

Dear Mr. Guardia:

In the event of my sending you some money to make a purchase of some of the Government land along the line of the proposed railroad, which is suit-

(Testimony of Hernan de la Guardia.)

able for the cultivation of sugar, what sort of a provisional deed do I obtain from the Government?

I may desire to make some purchases there and would like to know if you can act for me, providing I send the necessary funds and names of the parties who desire the property. I know, of course, that they cannot transfer the same and that they must be cultivated and fenced within four years, but that they will arrange to do so—if they make the purchase. I shall, of course, expect to pay you a proper fee for looking after this work for me. I want you to know that anything you may do will be suitably paid for. Please let me have an answer to my letter under date of April 8th, at your earliest convenience, addressing care of the above hotel.

Very truly yours,

JOHN G. LYMAN.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 11. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [214]

Mr. REGAN.—I show you a letter written on paper stamped “Hotel Alexandria, Los Angeles, California,” dated “April 15, 1911,” addressed “Sr. Hernan de la Guardia,” “City of Panama, Panama. Dear Mr. Guardia,” and signed “John G. Lyman,” and I ask you whether or not you received that letter?

A. I received it.

Mr. REGAN.—I now offer this letter in evidence and ask that it be marked United States Exhibit 12. (Said letter so offered in evidence is marked United

States Exhibit 12, and is read in evidence as follows:)

**U. S. Exhibit No. 12—Letter, April 15, 1911, Lyman
to de la Guardia.**

HOTEL ALEXANDRIA.

Los Angeles, April 15, 1911.

Senor Hernan de la Guardia,

City of Panama,

Panama.

Dear Mr. Guardia:—

Referring to my letter of yesterday regarding the purchase of some government land, I believe it is going to be possible to interest quite a number of prospective settlers here, and I think that a company will be formed called the

PANAMA DEVELOPMENT COMPANY

to do this work. Now, should they take it up, they would want a representative in Panama to select the land for them and see that they obtain the proper provisional title, such as the Government gives pending the cultivation of the lands and fencing of same. I have recommended you for that post and I think they would be willing to pay you \$150.00 gold per month for the first six months, and \$200.00 gold per month for the second six months, to take charge of the work in Panama and see that all the work necessary was properly attended to. In addition to this they would want you to rent a suitable office in Panama and pay your clerk hire as well as printed matter and other office expenses. [215] Now, if this is acceptable to you, please cable as follows:

“LYGRANT, Los Angeles. Accepted.” and sign it “Guardia.” and I will at once see that \$500.00 in gold is sent you to pay your first month’s salary and provide you with sufficient funds to rent the office and other incidental expenses. “Lygrant, Los Angeles” is my cable address, and should you wish to cable me at any time use the Western Union Code, which book you will find either at the Western Union Office in Panama, or at the Hotel Tivoli.

I believe this connection should prove very profitable to you, as well as a most desirable thing for Panama, for if some good settlers can be brought in there, it will unquestionably be a good thing for the country. As I understand it, one desiring to obtain government land there can make the proper application through you and upon making the first payment per hectare can obtain any amount desired, and this they obtain a provisional deed to, which cannot be transferred and which is made permanent if they complete the amount of cultivation required and fence the same within four years, which work the Panama Development Co. will undertake to do for them so that when they go to live on their lands they will be at least under partial cultivation. Please read my letters carefully and answer fully on every point, for as it will take some time for our letters to pass, if you fail to answer any questions asked, I shall not know of it for a long time and by carefully answering each letter, it will not be necessary to constantly repeat regarding the same subject matter.

Hoping to hear from you soon, believe me,

Very truly yours,

JOHN G. LYMAN,

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 12. Filed October 12, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [216]

Recital Re U. S. Exhibit No. 13.

Mr. REGAN.—At this time I introduced in evidence a certified copy of the map of Panama issued by the Government. That is obtained from Washington. That will be United States Exhibit 13. This is a map marked “Map of the Republic of Panama. Prepared in the War Department Office of the Chief of Staff, Section *Section*, Washington, D. C., April, 1909. Reproduced in photographic room, war college, Division General Staff. Scale of miles. Authorities: Hydrographic charts, United States Navy Department. Isthmian Canal Commission Maps. Intercontinental railway survey maps. Report of Commissioner T. O. Selfridge, U. S. N. 1870. Report of Commander E. T. Lull, and Lieutenant F. Collins, U. S. N. 1875. Map of Panama by Ponce de Leon and Paz Bogota, 1864, Carte Generale del Isthme Columbien par L. N. B. Weyse, 1885. Representative of the new Panama Canal Company of Paris, 1899, Recognizances by officers of the United States Army, Navy and Marine Corps, 1903 to 1908, War College, Washington, D. C. and September 26, 1913.

I certify that this is a photographic copy of the official map on file in the office of the War College

(Testimony of Hernan de la Guardia.)

Division, general staff, of the War Department, entitled "Map of the Republic of Panama." Signed "C. Crawford, Major 20th Infantry, General Staff. Secretary of War College Division."

Q. Now, I show you a letter written on hotel paper, on Hotel Alexandria paper, dated July 20, 1911, addressed to you, and signed "John G. Lyman," and I ask you whether or not you received that letter? A. I did receive it.

Mr. REGAN.—We now offer the letter in evidence and ask that it be marked United States Exhibit 14. (Said letter so offered in evidence is marked United States Exhibit 14, and is read as follows:) [217]

U. S. Exhibit No. 14—Letter, April 20, 1911, Lyman to de la Guardia.

HOTEL ALEXANDRIA.

Los Angeles, April 20, 1911.

Senor Hernan De La Guardia,

City of Panama,

Panama.

Dear Mr. Guardia:—

I think it was you that spoke to me of a large tract of banana land, consisting of some ten or twenty thousand acres, on the west coast of Panama, down towards Columbia.

How far is this property from Panama City? Is it on tide water or near tide water and is there a harbor there sufficiently large for fruit steamers to dock?

If you know of such a property for sale, please send me full particulars with price. If you know of

(Testimony of Hernan de la Guardia.)

anything near Panama, couldn't your Costa Rico friends that I met there put you in touch with some banana lands that are worth while? Have got a purchaser for a large tract of desirable land; so please let me have particulars as early as possible. Hoping to have answers to my other letters at an early date, believe me,

Sincerely yours,

JOHN G. LYMAN,

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 14. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Whereupon an adjournment was taken until 2 o'clock P. M.

Direct Examination (Continued).

Mr. REGAN.—Mr. Guardia, I show you this letter addressed to you and signed Lyman, dated May 2d, 1911; examine the same and see whether or not you received that through the mail.

A. I received this letter.

Mr. REGAN.—I now offer the letter in evidence and [218] ask that it be marked United States Exhibit 15.

(Mr. REGAN reads U. S. Exhibit 15, which is as follows):

**U. S. Exhibit No. 15—Letter, May 2, 1911, Lyman to
de la Guardia.**

HOTEL ALEXANDRIA.

Los Angeles, May 2, 1911.

Senor Hernan de la Guardia,
City of Panama,
Panama.

Dear Mr. Guardia:

Glad to receive your cablegram and hand you herewith check for \$500. Will you please arrange to secure a suitable office—if you could have half of one such as you now occupy, that would do for the present, and arrange to have all of your letters typewritten, keeping carbon copies of same.

I hope you will go over carefully my letters under dates of April 8th, 14th, 15th, 17th, 20th and let me have a complete answer to all.

If I understand the laws correctly, relative to the method of acquiring public lands in Panama, all that it is necessary to do is to address a petition to the Provincial Administrator of Public Lands (where is his office located—in the City of Panama, or in David?), stating the lands to be desired, and after this petition has appeared in an official gazette and a notice posted in the Administrator's office for 30 days, a provisional title is granted, and then the party who has applied for lands has four years in which to cultivate and fence the same, after which he can obtain a perfect title, on paying, of course, the balance of the purchase price.

Now, for the parties who desire the lands I will

send you their power of attorney, which will enable you to make the application to the Provincial Administrator on their behalf, and the selection of the lands will be left largely to you.

In this connection, would not Mr. Queleuejeu's services [219] be valuable? As he was born in Chiriqui and knows everybody there, it should be possible to arrange through him for some one to select the government lands for us, and then you obtain the provisional title by virtue of the power of attorney, in the names of the parties executing the same.

The next step is to arrange for contract labor to clear the land and put in sugar cane, rubber, orange trees or anything else that may be desired, depending upon the lands selected.

As there is a very fine belt of citrus fruit lands along the Costa Rican border, I think if you could find someone who was familiar with that particular district that I personally would like to put in a lot of oranges there, and will send down a man who is an expert on their culture, when I learn that you have someone who can make the proper selection of lands.

Regarding contract labor, I would advise talking it over with some of the Chinese merchants, as I believe the Chinese coolie labor would be the best, and failing in that, then to get some of the Jamaica niggers, as soon there will be a lot of these free from work on the Canal and it should be easily possible to secure some of the live young engineers who are now

employed on the Canal, to go in the country in charge of a labor party and not only do the surveying, but look after the clearing in a general way.

I am inclined to believe that if a large tract was put in sugar cane, too, it would prove a very profitable investment and if only sufficient acreage was devoted to cane, it would be an easy matter here to secure sufficient capital to put up a mill there to grind the cane, and so the first thing to do is to clear the land and get it into cane and the rest will come about naturally, and when the canal is opened the markets of the whole world will be at your door.

You spoke to me one day of the son of the Secretary of [220] State, who I believe you stated was in the Land Office, and I think it would be highly advisable to engage him to work with us, as he having all of the maps of the country at his disposal and knowing the best sections to take up lands, would be able to advise the best locality to make locations.

I earnestly hope you will appreciate the possibilities the successful results of our labors mean to Panama, for it is an absolutely certain thing that if the most is made of the wonderful agricultural capabilities of Chiriqui, it means not only a benefit to Panama, but a large financial return, to all those interested in the development as well.

As we shall be able to interest all of the capital and right kind of settlers necessary to develop the country, it only remains to secure proper co-operation at your end of the line to make it a huge success, and so I trust you will put your whole soul and attention into the business.

Do not fail to advise me fully as to anyone whom you may arrange with to work for you, and try and get someone whose services will prove of real benefit.

We should also have a representative at David, for the Province of Chiriqui is going to present the greatest opportunities and there is where we shall want to do our first work. When we get things in running order, will send down a large gasoline boat, capable of accommodating a dozen persons, with sleeping accommodations, so that the trip to David can be made as desired and a reasonable amount of comfort.

Take up with the Land Office at once and endeavor to obtain a large map—one showing simply outlines will do—of all the government land in the Province of Chiriqui and particularly along the line of the new railroad, which is open to location, and mark on same, in a rough way, which part is most suitable to the cultivation of sugar cane, coffee lands—that would be [221] around Boquete—citrus fruit lands—that would be around the Costa Rican Border—also lands suitable for rubber, cocoa, as well as timber and grazing lands.

What do you do about timber lands? You can't cultivate those. As I understand, all that is necessary to do with timber lands to hold them is to fence and make trails through them?

What is going to be the approximate cost of surveying and plotting the lands, preparatory to obtaining a provisional title?

Hoping you will read this letter carefully and give me a full answer to same, as well as to the others,

and with warm personal regards, I am,
Very truly,

LYMAN.

Address: In the future to 216 Mercantile Place.
Los Angeles.

And note my cable address is Lygrant, Los Angeles.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S.
Exhibit 15. Filed October 17, 1913. Wm. M. Van
Dyke, Clerk. By C. F. Scott, Deputy Clerk.

“It was here stipulated that all letters introduced,
signed Lyman, John G. Lyman, or John Grant Ly-
man, with the exception of U. S. Exhibit 1, were
signed and sent by defendant.”

“Q. (By Mr. REGAN.) I show you a letter
dated May 11, 1911, addressed to you and signed
‘John G. Lyman’ and ask you whether or not you re-
ceived that letter.

“A. I received that letter.

“The letter so identified was introduced and read
in evidence, marked U. S. Exhibit 17, and reads as
follows:

**U. S. Exhibit No. 17—Letter, May 11, 1911, Lyman to
de la Guardia.**

HOTEL ALEXANDRIA.

Los Angeles, May 11, 1911. [222]

Senor Hernen de la Guardia

City of Panama,

Panama.

Dear Mr. Guardia:

I trust you have received mine of May 2d, with en-
closure of check for \$500.00, and have made tentative

arrangements for suitable offices as therein suggested. Wish you would arrange too, for an office in the city of David, with a local representative who is familiar with the country hereabouts, and one who could locate desirable lands.

Just as soon as I have had an answer from you, covering the points raised in my various letters, will send you a check for \$2,000.00 or whatever funds may be necessary so that you will at all times have sufficient in hand to cover what we desire to have done. I think, too, we will elect you president of the company so that you will have an official title, and will be legally authorized to act on our behalf, which will have the additional advantage, too, of relieving you of any personal liability.

Of course what we want is to put you in such a position that you can legally act for us, and to relieve you of any personal responsibility, which will be accomplished by this, and then if you have sufficient funds to cover any possible expense, you will be free to act and apply on our behalf for such land as we desire.

Cannot you arrange with the Administrator General of Lands or the Provincial Administrator of Lands in Chiriqui, whereby when you make proper application on our behalf for Government lands, say those suitable for the growing of sugar cane or banana lands, that they will select the best lands for us? Of course we would be willing to pay for this service, and any reasonable arrangement you make to that effect with them would be agreeable to us. [223]

I hope you appreciate that our efforts here are *going redound* greatly to the benefit of Panama, as we

shall be the means of bringing some very desirable settlers down there with ample capital to develop the lands acquired, and will do all you possibly can to help us, and I assure you if you will do this that in addition to the salary already promised you will be handsomely rewarded.

As soon as we received advices from you that you can arrange to contract for the necessary labor to develop the sugar lands we desire to take up, and advise, approximately, what the cost will be, will send you all the money necessary to do this work. Have they commenced the erection of that sugar mill yet for which the Government concession was granted?

If so, we would like to obtain some sugar lands in that immediate vicinity. I hope you will consult with your father regarding the various matters brought up in my letters as I feel he can help you a good deal, and when it comes to completing title to the land we would like a legal opinion from him that everything is in order, and for this, of course, we shall expect to pay as well as to any other service rendered.

Now if you will only fully answer all of my various letters, we shall know just how we stand and just what we should do, and you may rest assured that nothing here will be left undone to make this business a complete success and to start the development there, which would result in a decided benefit of all concerned.

With warmest personal regards,

Most cordially yours,

JOHN G. LYMAN.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 17. Filed Oct. 17th, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Dpty. Cl. [224]

A letter dated Los Angeles, May 16, 1911, on letter head of Panama Development Company, signed "John G. Lyman," was identified as having been received by the witness, was introduced and read in evidence and marked U. S. Exhibit 18, said letter reading as follows:

U. S. Exhibit No. 18—Letter, May 16, 1911, Lyman to de la Guardia.

"Los Angeles, May 16th, 1911.

Mr. Hernan De la Guardia,

City of Panama,

Isthmus of Panama.

Dear Mr. Guardia:

As we understand the matter, the Articles of Incorporation of the Panama Development Company must be filed with the Secretary of Panama before we can transact business in the Republic; therefore you will kindly take the necessary steps to have this done, advising us at the same time just what was required in order to transact business there under our charter.

Very truly yours,

JOHN G. LYMAN.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 18. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk."

The witness then identified as having been received by him a letter dated Los Angeles, May 16, 1911, on letter head of Panama Development Company, signed "John G. Lyman," said letter was offered and read

in evidence, marked U. S. Exhibit 19, and reads as follows:

U. S. Exhibit No. 19—Letter, May 16, 1911, Lyman to de la Guardia.

“Los Angeles, May 16th, 1911.

Mr. Herman De la Guardia,
City of Panama,
Isthmus of Panama.

Dear Mr. Guardia:

In order that you may properly open a bank account, contract [225] in the name of the company, and transact such other business as may be required, you have been elected President and Director of the Panama Development Company, and we hand you herewith a formal notice to that effect; likewise certified copy of Charter, which we take it, must be filed in Panama in order to do business there.

We would suggest your doing business with the International Banking Corporation, as they are represented on the Pacific Coast, and then, if desired at any time, we could deposit money to your credit here, so it would be instantly available by you. Just as soon as you are properly established we will give you sufficient so that you will at all times have at least a \$2,000 credit balance at the bank, as we want you to have something to go on with in whatever way may be necessary.

It certainly does take a long while to get an answer to letters, for it is more than six weeks ago since I wrote you the first time.

We think well, too, of having an Advisory Board in Panama for you to consult with, and we have ap-

pointed your father and Mr. Quelquejeu to act with you, so that if any question of policy comes up, your combined judgment should lead you in the right course. We have written them that so far as compensation is concerned, whatever sum they deem proper we shall be willing to pay. It is probable at the start they will not be called upon to any great extent, so that their compensation can be satisfactorily arranged before it becomes necessary to make a serious draft upon their time. So far as they are concerned, we hope chiefly they will aid you in advising when it comes to making contracts for work in clearing lands, and advising the best method of procedure to securing best results.

We are in touch with one of the greatest experts in the sugar line there is in the country, and believe that with a sufficient [226] amount of land put into cane, that can be made a very profitable industry, so that will be one of the very first things we shall want to take up, yet we shall want to go slow until we are sure we are on the right track.

Now we think with the papers sent you, that you will be in a position to do everything that may be required without having your authority questioned, and as an official of the Company, this, of course, relieves you from all personal responsibility, which we do not ask or expect you to assume.

I hope you have answered all my letters in detail, and hereafter please address all of your correspondence that refers to the business of the company, direct to the Company, and anything that is private or personal, to me.

I am very certain that we are going to meet with great success if we have the proper assistance at your end of the line, and so I trust you will do your best, as it cannot fail to prove advantageous to all concerned.

With sincere regards, I remain,

Most cordially yours,

JOHN G. LYMAN.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 19. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.”

The witness then identified as having been received by him a letter dated Los Angeles, May 27, 1911, on letter-head of Panama Development Company, signed “Lyman.” Said letter was offered and read in evidence, marked U. S. Exhibit 21, and reads as follows:

U. S. Exhibit No. 21—Letter, May 27, 1911, Lyman to de la Guardia.

“Los Angeles, May 27, 1911.

Mr. Hernan de la Guardia,

City of Panama,

Isthmus of Panama. [227]

Dear Mr. Guardia:

Your welcome letter under date of May 16th at hand, and contents noted.

You have doubtless received my answer to your cable, together with the \$500.00 remittance sent you.

Regarding a map of the proposed railroad; we have already received that from the Government at Washington.

Regarding the taking up of lands; that can be arranged without any difficulty, by your acting under a power of attorney, as has already been arranged for, and the cultivation of same can be taken up any time within four years.

The provisional title given you would be just as good as though given to somebody else, so long as you execute a power of attorney and agree to turn it over.

I think we will send someone down to work with you at an early date. Just as soon as I hear what bank you will do business with, and I take it it will be the International Banking Corporation, a credit will be opened for you there, so that you will have money to go on with for whatever work we wish taken up.

It may be well later on, as you say, to incorporate a company at Panama, and have each share of stock represent a certain amount of land, but I think so long as the provisional title is taken in your name, and you turn it over, together with the complete title, at the end of four years, or whenever the land shall be cultivated, that would answer very nicely.

We have already sent you the Articles of Incorporation for the above Company, together with all necessary authority, so that you can register same and open a bank account and contract on behalf of the Company up to an indebtedness of \$5,000 without submitting it to this office. Thus, you see, you are given a great deal of freedom.

We think it would be well if your father and Mr. Quelquejeu [228] would meet with you once a

week and consider whatever we want done, and if they would give this time to it, we would be glad to give them each \$500.00 (Gold), per annum, and should they be called upon to give more than one or two hours a week to the business, will pay them accordingly, as it is not a question of money with us, but of getting the best results.

There is no doubt whatever but that there is going to be a great development in Panama, and we want to aid and profit by it. This can best be done through a company which has ample resources. We are starting off with \$50,000 (Gold), and can get as much more as we may desire.

Shall be glad to have full particulars regarding the banana proposition.

Am glad to learn that you are feeling better.

You may expect to see me down there again before long.

With sincere regards, I am,

Very truly yours,

LYMAN.

With sincere regards, I am

Very truly yours,

LYMAN.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 21. Filed Oct. 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk."

These letters are replies to the letters sent by Lyman to the witness, and are letters which I understand were taken, some of them, or possibly all of them, even before the defendant was arrested, with-

out search warrant, or without process or authority of law—and taken from the office of the corporation.

Mr. REGAN.—They were taken at the time the defendant was taken into custody.

Mr. SCHENCK.—That is addressed to the defendant from the witness, is it? [229]

Mr. REGAN.—Yes, and I will now introduce the same in evidence and ask that it be marked United States Exhibit 20. (Letter received in evidence is marked United States Exhibit 20, and is as follows):

U. S. Exhibit No. 20—Letter, May 16, 1911, de la Guardia to Lyman.

Panama, May 16th, 1911.

Dr. John G. Lyman,
Los Angeles, Cal.

Dear Dr. Lyman:—

I am answering every letter from you to date and shall be as brief as possible.

I beg first to say that I have not received an answer to my cablegram of April 28th, and therefore cannot devote my time to your affairs as that would undoubtedly mean the loss of my position.

Letters of March 30th and Apl. 8th.

A map of the proposed railroad is only obtainable on a deposit of \$25.00, and a rough sketch could not be accurate and therefore would be of no value. I have not received the Charter of the concession you would like to obtain here.

To know the exact location of the property with regard to the proposed railroad I must have a map of same.

I must state that in order to buy any property in this country, and get what you are looking for, at a reasonable price, it is necessary to personally inspect the property; and I could not do that without incurring expenses.

Paitilla (that is the name of the point of ground opposite the city) has 400 hectares and they want 100,000 dollars for it. It is within the Zone limits but will be in Panama Territory after a permutation which is now being negotiated between Panama and the canal Zone Government.

The Lottery privilege is good for fifty years yet.

The owner of that property in San Carlos (the property on [230] which you wanted an option) will not accept anything under \$80,000 for the whole property and will not accept an option on 5000 acres.

Letters of April 14th and 15th.

In order to buy Government land in Panama it is necessary to be domiciled in the Republic or in other words to be a resident. Therefore you could not get a provisional title. The only way out of it would be for me to buy the land in my name and turn it over to you at the expiration of five years or before that time "provided that four-fifths of the land taken up is cultivated." Such an arrangement (I refer to the law) seems to me most inconvenient for a land dealer, as it is impossible to induce people to take up land without any title to it and only with the mere promise of getting one after having cultivated practically every inch of it.

Another way would be to incorporate the Com-

pany in Panama and in that way you could dispose of the land in the way of shares.

By the above said you will readily see that I cannot buy public land for parties in the States, as they are nonresidents.

In case you succeed in bringing about the formation of the PANAMA DEVELOPMENT COMPANY I think it will be advisable and not only advisable but necessary to incorporate the company here.

The law provides that no more than twenty thousand hectares can be obtained by a single individual or company.

The public lands of Panama are divided into two classes. The *indultadas* (which belong to the Municipalities), and the *baldias* (which belong to the National Government.)

Both are sold by the Government but they have different price.

The *indultadas* are worth \$0.50 per hectare the first 100 hectares, and the price increases 5 cts. per hectare on every [231] additional 100 hectares. The *baldias* have a flat value of \$2.50 per hectare, but only half its price is required to obtain the provisional title, the other half payable before obtaining the permanent title.

Both classes of land are subject to the clause of cultivation. I wish to state that the lands adjoining the proposed railroad are nearly all *indultadas*. The *baldias* or National lands beginning in the point of Chame and running south towards Colombia.

Letters of the 17th and 20th.

Have seen Mr. Quelquejeu and he said he would write recommending me as your representative. The reason I have not answered your letters before is that on account of sickness I had to undergo a slight operation and was too weak afterwards to attend to business.

With regard to banana land I have been offered a property which will, I think, suit your case perfectly, only I am not in possession of full particulars yet. But will write to you extensively on the matter in two or three days' time.

Hoping to hear from you soon, I remain,

Yours sincerely,

H. de la GUARDIA.

I have inside information that leads me to believe that the railroad is going to be started soon, the contract to be awarded within two months.

H. G.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 20. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter dated May 31, 1911, signed "Lyman" as having been received by him; said letter was introduced and read in evidence, and marked U. S. Exhibit 22, and [232] reads as follows:

**U. S. Exhibit No. 22—Letter, May 31, 1911, Lyman
to de la Guardia.**

“HOTEL SEMLOH,

Salt Lake City.

Semloh Hotel Co., Proprietors.

May 31st, 1911.

Hernan de la Guardia,

City of Panama,

Republic of Panama.

Dear Mr. Guardia:

With further reference to yours of May 16th, things have been moving on a pace since I last wrote you, and in a most satisfactory way. We have arranged with one of the principal men of the United Fruit Company who has been in charge of their plantations in Costa Rica and Bocas del Toro for ten years past to come with us, and he will probably have charge of our banana plantations.

We have also arranged with an expert sugar man from Cuba to take charge of a colony and sugar estates which we shall probably establish at Agua Dulcia, province of Cocle, providing he likes the look of the ground when he gets down there.

We have also arranged with an expert citras fruit man to establish a citras fruit plantation up above David, near the Costa Rica line. As all of these men are familiar with conditions in Panama, it will be possible for them to act under a power of Attorney for others, and in connection with you, so we feel we have made excellent progress.

We propose charging \$5.00 an acre for the land,

which is a fair price when you consider that we are going to survey it and lay it out for the colonists in addition to selecting it for them, and as we sell it with the privilege of their having their money returned to them at any time within a period of two years, no one can complain of their not being treated fairly, or paying more than they should pay. Our idea is to establish several [233] American colonies in different parts of the country as near transportation as possible, and to take charge of the preliminary development work which will be under the charge of an expert. We feel that by proceeding in this manner we shall obtain the very best results, and no one can have cause to complain, which they might have if we sold them land and then left them to shift for themselves. We start off with cash capital of \$50,000.00 gold and have fifty thousand more pledged if necessary, so you see we are in a sound position.

Our representative who will have charge of the Citrus Fruit work will probably make his headquarters in David and will look after our business there, which will not be much, as we expect to do most of it here and possibly there will be some callers in Panama. Should anyone call on you and wish to purchase land you can contract to sell them as many acres as is desired at \$5.00 per acre, payable $2\frac{1}{2}$ dollars down and $2\frac{1}{2}$ in four years. You can say to them if they wish sugar land we will establish them at our proposed colony in Cocle or if citrus fruit land, then up west of David, and state to them that if they are dissatisfied with the selec-

tion of land we make for them, that we will return the full amount paid at any time within two years. By giving them this length of time, it will give them an opportunity to see exactly what we propose doing, and then those who are dissatisfied can withdraw without loss to themselves. I don't believe you have any conception of the development that is going to take place in Panama as the result of building that new railroad in connection with the Canal, but a little consideration given the matter will show that it is not only going to prove a great thing for Panama but for everybody interested in the work, providing it is done properly, and that is what we are aiming to do.

I had a nice letter from Mr. Quelquejeu, who offered to help us in every way possible, and we shall be very glad indeed [234] to avail ourselves of his services and in connection with your father and yourself should constitute an Advisory Board, which should successfully solve any problems that may come up.

Now, as to their compensation for their services we should be glad indeed to pay any sum which they think proper, and please take this up with them without delay, so that they may not feel that their time is being trespassed upon without proper pecuniary reward.

As I have already written, the War Department at Washington has supplied us with a fine map of the new railroad.

Regarding the taking up of Government land,

it will be all right to buy it in your name and turn it over to any one we may desire within the four years or after we have had four-fifths of it put under cultivation.

I have already sent you the certified copy of the Articles of Incorporation of the PANAMA DEVELOPMENT COMPANY, which please have registered in Panama so that we can transact business there. You have also been given requisite authority to enable you to open a bank account and make contracts on behalf of the Company, and I trust, too, by this time you have received the five hundred dollars sent you, and just as soon as you advise us that you have everything in shape to do business, we will send you further funds, so that you will at all times have money to go on with.

Please send full particulars about that banana property that you had offered to you. Will let the matter of Paitilla drop until I come down. Am sending a copy of this letter via. San Francisco, also New Orleans. Please advise which one arrives first.

With warmest regards to your father, and hoping you will give this business the serious attention it deserves,

I remain,

Most cordially yours,

LYMAN. [235]

P. S.—Continue to address me 216 Mercantile Place, Los Angeles, Cal.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 22. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk."

The witness identified a letter as having been written by him; said letter was introduced and read in evidence, and marked U. S. Exhibit 23, and reads as follows:

**U. S. Exhibit No. 23—Letter, June 15, 1911,
de la Guardia to Lynn.**

"Panama, June 15th, 1911.

Mr. E. A. Lynn,

Secretary Panama Development Company,
216 Mercantile Place,
Los Angeles, Cal.

Dear Sir:—

I am in receipt of the money sent me in the first remittance which as you probably know was a check for \$500 dollars drawn on the First National Bank of that City and had to be sent back for collection.

The money arrived here on the 7th inst. and I immediately started for the country to inspect a property in the Chorrora District. Not returning until today I have to make haste in order to catch the mail. By next mail I shall give you detailed information as to the property which is excellent land for sugar cane. I intend to secure an office just as soon as *find* one suitable. In the meanwhile I am attending to business from my house and have resigned my position with the Panama Gov-

(Testimony of Hernan de la Guardia.)

ernment in order to devote myself entirely to the Company's business.

Yours truly,

H. de la GUARDIA."

Q. (By Mr. REGAN.) Was that land in the Chorrera district private land or government land?

A. Private land. [236]

Q. Mr. Guardia, showing you letter dated Panama, 117 Central Avenue, June 21, 1911, addressed Mr. E. A. Linn, Secretary Panama Development Company, and signed "H. de la Guardia," I ask you whether or not you wrote that letter and mailed it?

A. Yes, sir.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 24.

(Said letter so offered in evidence is marked United States Exhibit 24, and read in evidence, and is as follows):

U. S. Exhibit No. 24—Letter, June 21, 1911, de la Guardia to Lynn.

Panama, 117 Central Avenue,

June 21, 1911.

Mr. E. A. Lynn, Secretary,

Panama Development Company,

216 Mercantile Place,

Los Angeles, Cal.

Dear Sir:

I am answering the letters addressed to me by Mr. Lyman according to date, as he instructed me in one of them to address all business correspondence to

you as the secretary of the Company, and I take it that you are familiar with said letters, or that you have copies of same.

LETTER MAY 2d: I have secured an office, located as per heading, which costs \$25.—per month. It is situated in *every* prominent street, and is furnished, which saves the Company the expense of buying furniture. I have also rented a typewriting machine at the rate of \$6.—per month until you send me one, or instruct me to buy one. I typewrite all letters, keeping carbon copies of same as directed. The office has no telephone connection, but I do not require one at present. Any further expense, such as sweeping the office, writing material, postage, etc. I shall give you an account of later on.

I have answered fully the letters of April 8th, 14th, 15th, 17th and 20th.

I beg to state that I have been to see the Administrator General of Lands, and also the Acting Secretary of Fomento, trying [237] to obtain a map of the public lands of the Republic, and especially those located near the Panama-David R. R.; and I was informed by them, that, although the laws provide that a map showing the public lands be made up, no map of this kind exists as yet; and that the only way to get public lands is to go into the country and locate the lands; then get three affidavits before the municipal judge, from persons residing in the district where the land desired is situated. (The affidavit should be a statement to the effect that they do not know of any owners to the lands involved, and that said lands are public.) After that a petition is addressed to the

Provincial Administrator of Lands, stating the lands wanted and the boundaries of same, also their approximate extension (just a matter of form) and attaching the affidavits. After that the petitioner has to pay for the publication of the petition at the rate of 5c per word.

When the lands demanded have been surveyed by the official surveyor, the administrator notifies the petitioner in order that he may see the map of the same, and if he finds it satisfactory (the petitioner is entitled to make some alterations) he pays the cost of the provisional title at the rate of \$1.25 per hectar.

The surveying of the lands claimed is done by the official surveyor, and the expense incurred is charged to the petitioner.

In case of protestation (which often occurs, as there are squatters located on public lands) it is necessary to enter legal proceedings, which necessitates legal advice. As to the legal advice referred to, I have engaged Mr. Dario Vallarino, who is a capable lawyer, for the purpose of consulting him, and for any further legal work which we may find necessary to take up. Mr. Vallarino's salary I have arranged as \$50.—per month, subject to your approval. I feel that we shall have a great deal of legal work when we begin to take up the lands.

With regard to the lands for planting sugar cane, I will [238] say that according to the opinion of experts here, sugar cane can be planted at the rate of \$75.—to \$80— per hectar; that includes the clearing and planting up to the first cut. At that rate contracts could be obtained for planting. This is,

of course, under present conditions, as very few laborers are available, and the contractors or the Company would have to bring them from the West Indies. Perhaps those conditions could be improved and much money saved by using modern machinery, such as stump pullers and steam ploughs.

I have received the Articles of Incorporation of the Panama Development Company; but before the Company can be registered in Panama it is necessary to have the charter (which I am returning you under separate cover) authenticated by the Panama Consul in San Francisco.

I need the minutes of the meeting of the Board of Directors at which they elected me President and Director of the Company, if I am to act as such; and a Power of Attorney issued by the officials of the Company and sworn to before a Notary Public, of Los Angeles, if I am to act as representative of the Company, and both documents must be authenticated by the Panama Consul in San Francisco.

The registration fee in Panama is 20c per \$100—which for the Panama Development Company, incorporated for One Million Dollars would amount to \$2,000. To this will have to be added the cost of translation of the Charter, which must be done by the Official Translator, and the notarial fees, which will make a total of about \$2050.—

I have been to see Mr. Fearon, the manager of the International Banking Corporation, and showed him the Charter of Incorporation of the Company, as well as the resolution of the Board of Directors in which they elect me President and Director of the Company

also authorizing me to open a bank account in the [239] name of the Company for the sum of \$5,000—gold, for the purpose of transacting the Company's business. Mr. Fearon told me that a regular power of Attorney is necessary in order to open such an account; he also inquired whether the Company had already acquired any properties here. He further suggested that the Company also deposit a sum of money to my credit with their branch in Los Angeles, whereby the Company could save greatly in exchange.

As to the approximate cost of surveying the lands prior to obtaining the provisional title, this is comparatively small, as the government only charges for the transportation and living expenses of the surveying party, and for the making of the trails.

As you may see by the foregoing statements I am in a position to act for the Company as soon as you return me the Charter of the Company, duly authenticated, as I have already pointed out, accompanied by a full power of attorney, certified to by the proper authorities, together with the minutes of the meeting as stated above.

Of course, I expect that you will see to it that the \$5,000—are paid in to the International Banking Corporation in Los Angeles, to my order here, as I estimate this to be the least amount that I need in hand for the proper carrying on of the Company's business, as the registration of the Company alone will cost over \$2,000—in gold. Of course, I propose to give you a detailed account of all expenses incurred.

I have made no arrangements with the Administrator General of Lands, or the Provincial Administrator of Lands in Chiriqui, with a view of engaging their services in locating the lands for the Company, as it is not in keeping with the law and would not result in any benefit to the Company.

It seems to me, that, as you say in your letter dated May 31st, that it is not advisable to engage labor to develop sugar [240] lands, or to contract for the planting of sugar cane, until a good tract of land has been acquired.

They have already brought in to Agua Dulce the sugar mill and machinery, for which a government concession was granted.

As to obtaining sugar lands in the vicinity of Agua Dulce, I do not think it advisable for the reason that the lands there are not the best kind for sugar; and the Company settling there is only doing so on account of the many concessions granted them besides the land.

I have not been able to consult with my father regarding the various matters brought up in your letters, as he is now away in the States and will not return for some time.

Your letter of May 16th with regard to filing the Articles of Incorporation with the Secretary of State has been replied to on page #3 and #4, where I also advised you as to what is required in order to transact business under said Charter.

With regard to having an advisory board in Panama to consult with, I have to say that Mr. Quelquejeu told me that he had written, advising you of

(Testimony of Hernan de la Guardia.)

his trip to Europe; and with regard to my father I shall not be able to advise you of his acceptance until he returns.

I am sending you under separate cover a copy of the various laws, issued by the National Assembly during its last session, in which you will also find the concessions granted the Agua Dulce people. The booklet is in Spanish, but I think you will have no difficulty in having it translated.

I shall give you full particulars with regard to the Banana proposition in my next letter, which will be in about four days, when I shall also submit to you a project of a concession which could be obtained from the Government here, as it is based on a similar contract as that granted to another concern, and which [241] I think will prove interesting to you.

Yours truly,

H. de la GUARDIA.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 24. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

I did not ever register the Panama Development Company in Panama.

Q. Did Mr. Fearon ever authorize you to say that he would be a member of the advisory board of the Panama Development Company?

Mr. SCHENCK.—I object to that as hearsay.

(Discussion.)

Q. Of the money that was received by you from Mr. Lyman, did you pay any to Mr. Quelquejeu or to your father or to Mr. Fearon?

(Testimony of Hernan de la Guardia.)

A. No, sir.

Mr. SCHENCK.—We object to that as immaterial.

The COURT.—Objection overruled.

A letter dated Los Angeles, June 23, 1911, signed "Panama Development Company, By L. R. Smith," was offered in evidence as U. S. Exhibit 25, and reads as follows:

U. S. Exhibit No. 25—Letter, June 23, 1911, Panama Development Co. to de la Guardia.

Los Angeles, June 23, 1911.

Mr. Hernan de la Guardia,
Avenida Central, No. 16,
Panama, R. P. Panama.

Dear Mr. Guardia:

Our Mr. Ryan, who is an expert *propiculturist* sails next week for Panama, will bring you down some stationery, which you can use temporarily until you have some of your own office addresses printed thereon.

We would suggest that to all inquiries you may receive from [242] States, in order to avoid any confusion, you write them along the lines of the letter enclosed herewith, otherwise we should not be able to handle these matters successfully, it requiring so long for our letters to pass.

We think it would be well for you to have a small advertisement, like the enclosed, appear in the Panama papers say twice a week, with your local address thereon, when your office is once established, as

there are a good many tourists coming to Panama, and doubtless you could sell considerable land, which Mr. Ryan should arrange for the developing of should the parties so desire. You can take this matter up with him on his arrival, as it is merely a suggestion to be carried out, if you think well to.

Very truly yours,

PANAMA DEVELOPMENT COMPANY.

By L. R. SMITH.

(Enclosure:) Dear Sir:

Replying to your inquiry regarding Panama lands would say that you can obtain all the information desired at the office of the Company, 216 Mercantile Place, Los Angeles, California.

This office is only an executive office, and we cannot undertake to answer general correspondence, which can be taken care of much better in Los Angeles, where we assure you you will meet with every courtesy.

Very truly yours,

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 25. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him; said letter was introduced and read in evidence, marked U. S. Exhibit 26, and reads as follows:

(Testimony of Hernan de la Guardia.)

**U. S. Exhibit No. 26—Letter, June 23, 1911, Panama
Development Co. to de la Guardia.**

Los Angeles, June 23d, 1911.

Mr. Hernan de la Guardia,

Avenida Central, No. 106,

Panama, R. P., Panama. [243]

Dear Sir:

This will introduce to you Mr. E. D. Ryan, who comes to Panama to take charge of our developing work there. Any courtesies or services you may render him will be greatly appreciated, and we trust you will be able to work together to our joint benefit and satisfaction.

Very truly yours,

PANAMA DEVELOPMENT COMPANY,

By JOHN REDPATH.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 26. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Q. Showing you U. S. Exhibit 26, did Mr. Ryan present that letter to you?

A. Mr. Ryan did present it to me.

The witness identified a letter as having been received by him; said letter was introduced and read in evidence and marked U. S. Exhibit 27, and reads as follows:

**U. S. Exhibit No. 27—Letter, June 23, 1911, Panama
Development Co. to de la Guardia.**

Los Angeles, June 23, 1911.

Mr. Hernan de la Guardia,
Avenida Central, No. 16,
Panama, R. P. Panama.

Dear Mr. Guardia:

Your favor of June 15th at hand and contents noted.

Mr. Ryan, who for ten years was connected with the United Fruit Company at either Bocas Del Toro or Costa Rica, is sailing on Wednesday next from San Francisco, and will be in Panama about the 20th of July.

He is to take charge of our developing work there, and should prove a very valuable man for that purpose. Please render him every assistance possible.

He will inspect that property in the Chorrora District [244] which you speak of, with a view of purchasing some for our own account, should it seem desirable. He will also go up to Agua Dulce and David, and will make a general tour of observation of the country, with a view of locating and developing some of the more desirable sections.

Please post him thoroughly as to the requirements necessary in making application for lands on behalf of other people.

Shall hope to hear from you fully shortly in answer to the various letters sent you; also regarding this property you speak of in the Chorrora District,

as well as to the banana lands, which you have heretofore mentioned as being located on the Savannah River.

Just as soon as you advise us if you have arranged with the International Banking Corporation, we will place to your credit here, with that Company, ample funds to take care of everything that may be required.

With sincere regards, I am,

Yours very truly,

PANAMA DEVELOPMENT COMPANY,

By LYMAN.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 27. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him through the mail and said letter was introduced and read in evidence, marked U. S. Exhibit 28, and reads as follows:

U. S. Exhibit No. 28—Letter, July 5, 1911, Panama Development Co. to de la Guardia.

Los Angeles, July 5, 1911.

Mr. Hernan de la Guardia,
117 Avenida Central,
City of Panama.

Dear Sir:

We sent you a package of stationery a few days past by [245] mail, and trust you will receive same in due time.

Kindly address your correspondence to the Pan-

aman Development Company, and not to Mr. E. A. Lynn.

Yours very truly,
PANAMA DEVELOPMENT COMPANY,
L. R. SMITH,
Secty.

S/C.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 28. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him, and the same was introduced and read in evidence, marked U. S. Exhibit 29, and reads as follows:

U. S. Exhibit No. 29—Letter, July 10, 1911, Lyman to de la Guardia.

Los Angeles, July 10, 1911.

Mr. Hernan de la Guardia,
City of Panama,
Republic of Panama.

Dear Mr. Guardia:

Have not heard from you in some time, but am expecting a letter each day.

Believing that you may soon require some money, I am sending you herewith check for \$1,000. and wish when Mr. E. D. Ryan arrives, you would give him anything up to \$500, which he may require, which he will duly account for to the company.

You may expect to see me down at Panama before very long. Am glad to say everything is going well with the Development Company and the work they

are doing here should certainly prove a great benefit to the Republic. As a result of their efforts a large number of the very best Colonists are going to Panama to locate.

With very best wishes and my compliments to your father, [246] believe me,

Most cordially yours,

LYMAN.

P. S.—Is there anything I can bring down to you when I come? Enc.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 29. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By. C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him and the same was introduced and read in evidence and marked U. S. Exhibit 30, and reads as follows:

U. S. Exhibit No. 30—Letter, July 11, 1911, Panama Development Co. to de la Guardia.

Los Angeles, July 11, 1911.

Mr. Hernan de la Guardia,
City of Panama,
Republic of Panama.

Dear Sir:

Your lengthy letter of June 21st just at hand is greatly appreciated, covering as it does many points on which we desired elucidation.

Am glad to note you have a satisfactory office and you better continue to rent a typewriting machine until some one comes down from this office and brings a new one, strictly up to date.

As already advised, we have an excellent map of the Republic, showing the line of the new railroad and now if we can obtain with same a general map showing the public lands of the Republic, open to location, it would be greatly appreciated, and as soon as one is prepared, we trust you will be able to obtain it for us.

We note that you have engaged Mr. Darlo Vallarino for the purpose of obtaining competent legal advice and have arranged his salary at \$50 a month, which is quite satisfactory to us. [247]

Note your remarks as to the cost of planting lands in sugar cane which are borne out from reports received from other sources, and without a doubt Mr. Ryan will arrange for contracts as soon as he has had an opportunity to look over the ground and decide how best to proceed.

After learning the cost of registering the Panama Development Company in Panama, we think it would be very unwise to register this company there, as really no useful purpose would be gained by so doing, and we think it would be much better to (in pencil) *incorporate* organize a small company called "The Panama Development Company" with an authorized capital of \$5,000, under the laws of the Republic of Panama, and would suggest that you have Mr. Darlo Vallarino prepare the necessary papers for that purpose naming as the officers, you as President, and your father and Mr. Quelquejeu as co-directors, paying them, of course, such compensation as they feel they are entitled to. You might, too, name one or two of the directors of this com-

pany as codirectors, if the laws of Panama permit of that, although this is not essential. Meanwhile you can act as President and Director of this American Company, as our laws permit of this, and we will send you in due course the minutes of the meeting of the Board of Directors, authorizing you to act as President and Director of this company, sworn to before a Notary Public, and the minutes authenticated to before the Panama Consul, in San Francisco, California.

By the way, do you know the name of the Consul General from Panama, located in London, and if you do not know his name, can you give us the address of the office?

The International Banking Corporation have no office in this city, but they may have an agent, and if you will kindly obtain his address for us, it will enable us to deposit money to your credit through him, so that it will reach you without delay. [248]

After you have incorporated the small Panama Company, as previously suggested, it will not be necessary for you to obtain any papers from us, to open a banking account, as you can do everything there, and any properties that we acquire, will be taken in the name of the company. As you are probably aware, it is a common occurrence for American Companies, which hold property in South American Republics, to do this in the name of some small local company, whose capital stock is largely owned by the larger company, which is to be done in the present instance.

We are inclined to believe that Mr. Ryan under

your and Mr. Vallarino's instructions—so far as the legal end is concerned—will be able to secure for us some very desirable lands, as he is an expert in tropical agriculture and is thoroughly familiar with every part of Panama, knowing its soils and timber lands, so we shall leave the selection of the lands entirely with him, as well as to give him considerable leeway in making contracts, and what we hope and expect you to do, is to see that everything is attended to in a legal manner.

We are glad to note that the sugar mill is now under construction at Agua Dulce, and we are inclined to believe from all reports that we have had, that that is going to be a very large town and will prove an excellent sugar district.

When do you expect your father to return from the States and Mr. Quelquejeu to return from Europe?

We thank you for sending us copy of the various laws, issued by the National Assembly, which the writer thoroughly understands, as I speak Spanish.

Shall be glad to receive from you the particulars about the banana proposition, as we think that is going to prove a very profitable business on the west coast.

Again thanking you for your most interesting letter, and assuring you of our earnest desire to work in hearty co-operation [249] with you, believe us to be,

Yours very truly,

PANAMA DEVELOPMENT COMPANY,

By L. R. SMITH.

McD.

P. S.—In future kindly address all correspondence to the company.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 30. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been written and mailed by him, said letter was introduced and read in evidence, marked U. S. Exhibit 31, and reads as follows:

U. S. Exhibit No. 31—Letter, July 12, 1911, de la Guardia to Lyman

Panama, July 12th, 1911,
117 Avenida Central.

Mr. John G. Lyman,
c/o Panama Development Company,
216 Mercantile Place,
Los Angeles, Cal.

Dear Sir:

I am in receipt of your letter of May 31st and am glad to see that you are making considerable progress at your end of the line.

I wrote a lengthy letter to Mr. Lynn under date of June 21st taking up all the questions raised in your various letters since May 2d, and I take it that you, being the organizer of the Company and being also intimately connected with it, must be acquainted with said letter and therefore I do not deem it necessary to go over the same points with you. And I believe, furthermore, that any correspondence addressed to you by me will be known to him and vice versa. However, I address this to you as I want to

take up a matter somewhat private but which you can make known to the company at your discretion.
[250]

As the taking up of public lands here on a big scale is a matter that involves no small trouble and difficulty (explained in letter of June 21st) I want to point out to you the convenience of obtaining a big land grant by means of a contract of colonization entered into with the Government.

With that end in view I want you to point out to the Officials of the Company the absolute necessity there is of having the company registered here and of paying in the registration fee (See letter of June 21).

The concession I propose obtaining is based on the one I am mailing you under separate cover (a copy of it goes registered) which you can have translated there from the Spanish.

As you see that is a most advantageous franchise. Of course I expect you to see to it that the Company furnishes me with all the money necessary to put it through, and also that when, once obtained, I shall have a fair participation.

With regard to the banana proposition, I dare say that I hardly think it worth considering (this with reference to the private property in the Bayano District). I am sending you a rough sketch of the property as given to me by the owner. You may see by it that it is very indefinite data and there is no exact idea of its area, only an estimate of \$20,000 acres. The price is also too high, \$50,000 dollars.

I have also been informed that in the Bayano

District, where the property is located, the titles are all tied up due to some concessions made by previous Administrations to different parties over the same ground.

With further reference to bananas I will say that I was to see the Provincial Administrator (for the Province of Panama) and he informed me that there is any amount of available public lands of the best quality for banana growing and also for sugar cane in the Darien District along the Tuira River but specially [251] along the Sabana (both navigable).

I am only expecting the banana expert and also the sugar expert to come and see the lands.

In the Tuira section a railroad is going to be built, a franchise having been granted for that purpose to an English syndicate.

My father is just back from a trip to Washington, where he went on a political mission, and he requests me (he is writing by this or next mail) advise you of his acceptance of the appointment you have made on him as a member (Director) of the advisory Board which is to operate down here on behalf of the Company, and that he will act in that capacity as soon as the Board is fully constituted.

That he will aid the Company in everything possible and legitimate because he believes that by so doing he will further the interests of the country.

He further *suggest* that you appoint Mr. Fearon, the manager of the International Banking Corporation here, as one of the Directors in place of Mr. Quelquejue (who is now on an extensive tour through

Europe), My father thinks that Mr. Quelquejue's services would be very valuable to the Company and could be secured upon his return.

It would also be good if you could come down on a visit as you suggest. Then we would be able to take up many questions together, and that would help things greatly.

By my letter under date of Jun 21st to Mr. Lynn you will see that I was over to see Mr. Fearon, the Manager of the International Banking Corp. and also what he said to me with regard to opening a bank account on behalf of the company. I feel that \$5000 gold is the least amount I need in hand to carry out your instructions (as explained in letter of June 21st.)

I would like you to note that one of the great advantages [252] that concession would bring about would be the formation of a town, as it is provided in it that the concessionary (grantee) furnish the Government with the lots necessary for public buildings.

By laying out a town the city lots would bring handsome prices.

I find it needless to say that the appointment of Mr. Fearon as one of our Directors would facilitate greatly our business with the Bank, and in our dealings with the Government, my father can well take care of that end.

I have not as yet had anybody apply to me for lands but I will *carry your* instructions to the letter.

Together with my letter of June 21st I sent the Articles of Incorporation of the Company to be

authenticated by the Panamanian Consul in San Francisco.

With regard to my running expenses here I must say that they are limited for the present to the office rent, the office expenses and my salary.

The latter I began drawing since April 28th, the day in which I cabled you accepting the position you offered me in your letter of April 11th.

You will see by this that I have drawn the salary two months and part of the third month, and have very little cash in hand to go on with as the only money I have received as yet is your draft for \$500 dollars payment of which I received on June 7th.

Referring to the copies of your letter of May 31st I will say that the copy that came via New Orleans reached me about 8 days before the one by Frisco.

Expecting to have an early answer to the various points raised in this letter and wishing you the best of health, I remain,

Yours respectfully,

H. de la GUARDIA [253]

P. S.—With further reference to the proposed Government concession it is up to you to say the locality where you want it (I myself think it advisable to have the experts make an inspection tour of the interior in order to locate the most suitable place). Of course there are sections where a large tract of public lands is not obtainable as it is all divided into small holdings.

The two sections of the country that present the best agricultural possibilities are Darien (see what I say about Tuira) and Chiriqui. Only Chiriqui has

never been known as a banana growing country.

H. G.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 31. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him, said letter was introduced and read in evidence, marked U. S. Exhibit 32, and reads as follows:

U. S. Exhibit No. 32—Letter, July 18, 1911, Lyman to de la Guardia.

Letterhead Panama Development Company,
Los Angeles, July 18, 1911.

Sr. Hernan de la Guardia,
City of Panama,
Republic of Panama.

Dear Mr. Guardia:

Hand you herewith a copy of letter which is self-explanatory, and which would like to have you send out. We are also sending the same thing to Mr. Ryan, so that if one is missent, the other will arrive all O. K.

Regarding the lands to be located, will leave that entirely with Mr. Ryan, as he is a thorough judge of lands suited to tropical products, and will have charge of all the development work.

I believe later on we might do considerable business in Panama with tourists, particularly next Winter. What do you think? [254]

Expect to come down there in September or October.

Can you give me the name of the Panama Consul located in London, and do you know anyone there that would be interested in our project?

Hope you will like Mr. Ryan, and will get along nicely together. He is thoroughly competent in his particular work, and I believe will be a very great help to us. While of course it will take some time to get started, think we are going at it right, and shall expect to obtain in the end most satisfactory results.

Is your father still in the States?

With sincere regards, I remain,

Most cordually yours,

(Signed) LYMAN.

P. S.—Have not received as yet the papers sent to the Consul in San Francisco which we are having certified for you.

[Endorsed on back as follows]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 32. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by him, said letter was introduced and read in evidence, marked U. S. Exhibit 33, and reads as follows:

**U. S. Exhibit No. 33—Letter, July 25, 1911, Lyman
to de la Guardia.**

Letterhead Panama Development Company.

Los Angeles, July 25, 1911.

Mr. Hernan de la Guardia,

117 Avenida Central,

City of Panama, Republic of Panama.

Dear Mr. Guardia:

Your most welcome letter under date of July 12th at hand and contents carefully noted. It is indeed a pleasure to receive your letters, as you go into matters most carefully.

Now, to take up your letter in detail. The suggested land [255] grant appeals to us very strongly, as without a doubt we could be the means of bringing such a Colony to Panama.

The concession which you sent a copy of have had partially translated, and so far it looks particularly good. Of course if the Company should enter into such a colonization project, it would furnish you with all the money necessary to put it through; likewise give you a fair participation in same.

Do you think a similar concession could be obtained for us on the Savannah? Please talk this proposition over with Mr. Ryan and see what he thinks of it.

How long since did the English Syndicate acquire the franchise for building the railroad into the Tuira district, and when will they commence work?

We are very glad indeed to learn that in addition to your father joining the Advisory Board, that Mr.

Fearon, the Manager of the International Banking Corporation is to so act, as this must prove helpful in every way. By the way, what are Mr. Fearon's initials?

Regarding Mr. Quelquejeu: as he has already accepted, and has shown a disposition to aid us in every way, we certainly think he should be retained on the Board as well.

Now as to the compensation of the various members; we will leave that entirely with the gentlemen concerned, and pay them whatever they think their services are worth. After we have been in operation a few months they will be able to determine this, and we shall be most happy to meet their views.

Regarding the registration of this Company in Panama; we think, after mature consideration, that instead of organizing a smaller Company under the laws of Panama, that we will reduce the capital of our own Company from \$1,000,000.00 to \$100,000 having that paid up in cash, which will give us all the capital we require, and make the cost of registering the Company in Panama [256] one-tenth of what it would be if we kept it as it now stands. With this end in view we have filed the necessary papers for the reduction of our authorized capital, all of which will be accomplished in three weeks' time, and as soon as the papers are at hand, will have them authenticated before the Panama Consul in San Francisco and send same to you, to be filed in Panama. We will also send the appointment of your father and Mr. Fearon, properly authenticated, although so far as our laws are concerned, this is not

necessary, and the papers already sent you cover all that is required.

Just as soon as we know what colonization projects we are to undertake, and have a campaign definitely outlined, we will lodge with you ample means to take care of everything that may be required. Thus far here we have sold considerable lands, but we have not called for much money, as we are arranging for a party to go down in the early Autumn, and if the results of their visit are what we anticipate, we then expect to do a very large business.

Regarding the best point for a Colonization project; Mr. Ryan should be able to assist in making a proper selection, as he knows the country thoroughly.

One of our California Judges, who has just been appointed by President Taft as Supreme Court Judge on the Canal Zone, is leaving on the 15th of August. As this gentleman is a prominent Californian, we have given him a letter of introduction to your father.

I sent you \$1,000 some time ago, which you undoubtedly have received by this time.

With many and sincere regards to our father, and most cordial best wishes for yourself, believe me,

Sincerely yours,

(Signed) JOHN G. LYMAN. [257]

[Endorsed on back as follows]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 33. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been written and mailed by him, said letter was offered and read in evidence, marked U. S. Exhibit 34, and reads as follows:

U. S. Exhibit No. 34—Letter, July 31, 1911, de la Guardia to Panama Development Co.

“117 Avenida Central, Panama, July 31, 1911.

Panama Development Company,
216 Mercantile Place,
Los Angeles, Cal.

Gentlemen:

Answer to Letters of July 10th and 11th.

I received a check for 1,000.— sent to me by Mr. Lyman, and shall give \$500.— to Mr. Ryan, as directed. I was not able, however, to dispose of the money as it was a local check, drawn on the First National Bank of Los Angeles, and had to be sent back for collection. I would suggest that for future remittances you purchase a draft of the First National Bank on the International Banking Corporation here, to my order; or if you want me to open a bank account, you should deposit funds with the International Banking Corporation in San Francisco to my credit here, furnishing me with a letter authorizing me to draw from same.

Mr. Ryan arrived here on the 25th inst. and we are only waiting for the payment of the check to start for the Interior to locate the lands. It will be a question of a month before we locate same, and another month before we shall have to pay into the Treasury the price for the land taken up. As I think that 5000 hectares will be the very least we

shall require to cover the sales already made, and those you will have made by the time we have the provisional title, we shall [258]

Panama Development Company 2 July 31, 1911.
need at once \$6250.—gold, the bare cost of the 5000 hectares.

My father withdrew his name from the Company for political reasons; and as Mr. Smith is conversant with Spanish, as I gathered from one of the letters, I thought it unnecessary to translate my father's letter in which he explained his reasons for resigning from the Company.

I was very much surprised that you did not send me any of your literature. I have found it around town and was the last person to know its contents. Please send me a large supply of it as it is very much in demand here.

I do not think it wise to sell any land in Panama until we have taken up a large tract of government land.

With regard to the incorporation of a small Company in Panama, capitalized in \$5,000. I think it would be a very good move. I have been to see the Secretary of the Treasury (Hacienda), with regard to the tax of incorporating the big Company, and I agreed with him that I should send him a memorial, (which I have done), setting forth my reasons why the Company should not pay such high tax. He will answer my Resolution, which may be favorable if the law permits it; otherwise I shall have to proceed to have Mr. Vallarino draw the statutes of the small Panama Development Company and shall send them

to you for your final approval before the Company is incorporated. (The officers will be friends of mine, of very good financial and social standing in Panama, and over whom I shall have control.)

Panama Development Company 3 July 31, 1911.

I shall give you the address of the Panama Consul in London by the very next mail.

The correspondent of the International Banking Corporation in Los Angeles is the First National Bank.

With regard to the Company to be incorporated here I shall [259] give you full details as soon as the papers are drawn up.

No map of the Panama Public Lands is as yet available.

You may rest assured that everything will be attended to in a legal manner.

I do not think that Mr. Ryan is in a position to make any contracts as yet; but he will have our co-operation (Mr. Vallarino's and mine) as soon as it becomes necessary to contract for any work to be done.

I contemplate going to Aguadulce with Mr. Ryan and then all over the Providence of Cocle; also Chiriqui, as he thinks that I shall be of great assistance to him in the way of finding accommodations and dealing with the natives.

I believe you have received my letter of the 12th inst. in which I spoke of my father's return and also of Mr. Quelquejeu's trip to Europe; I also submitted to you a concession which could be obtained here, and passed upon the banana proposition; I

(Testimony of Hernan de la Guardia.)

expect an answer to that letter any time.

Your letter of the 12th of July is at hand. I have already been making inquiries and shall give you full particulars as to information obtained by next mail.

Panama Development Company 4 July 31, 1911.
mail.

Your letter of July 18th, was also received with the List of Buyers to whom you desire that a circular be sent. I am having some stationery printed now and as soon as it is ready will have the letter type-written and sent out.

The papers you refer to are the Charter of the Company which I sent direct to Mr. Lynn by registered mail.

Without anything further for the present, I am,

Yours very truly,

(Signed) H. de la GUARDIA. [260]

G/G

[Endorsed on the Back as Follows]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 34. Filed October 17, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The WITNESS.—I never went into Agua Dulce and Chiriqui with Mr. Ryan, nor have I ever been over Chiriqui and Agua Dulce.

The witness identified a letter as having been received by him, which letter was introduced and read in evidence, marked U. S. Exhibit 35, and reads as follows:

**U. S. Exhibit No. 35—Letter, July 29, 1911, Lyman
to de la Guardia.**

(Letterhead of Panama Development Company)

Los Angeles, July 29th, 1911.

Mr. Hernan de la Guardia,

117 Avenida Central,

City of Panama.

Dear Mr. Guardia:

Since writing you last, we have had the Colonization Project translated, and the proposition appeals very strongly to us.

Now, to you suppose you can obtain a similar concession for us? If so, please make the necessary application at once, taking it in your own name, and then you can either hold it in trust for this company, to be delivered to it, or its nominees, as and when desired, or can transfer it in the first instance, if that seems more desirable.

Please take this matter up at once, and advise us just what you can do. The company will give you a 10% interest in the concession, free of all expense to yourself, and provide the necessary moneys to take care of it.

There is no question but that the Company can carry out the terms of a contract such as you have submitted, so this should prove very profitable business all around.

Do you think well of the Darien district? Isn't there a tremendous lot of rain there? Doubtless, however, the land in that section is very rich, and will be highly desirable for banana [261] grow-

(Testimony of Hernan de la Guardia.)

ing, likewise sugar cane.

As you will have a very substantial interest in this proposed concession, please obtain one in the very best district available, and under the most liberal terms possible, as you may count on the thing going through.

With very best wishes, I remain,

Most cordially yours,

(Signed) JOHN G. LYMAN.

The WITNESS.—With my letter to Lyman dated July 12, 1911, U. S. Exhibit 31, I sent a copy of the concession in Spanish.

Q. (By Mr. REGAN.) Do you know whether or not your father wrote any letter to the Panama Development Company?

A. Yes, sir, he wrote them.

Q. Did he make any inquiries from you before he wrote it, that is, to whom to address—what the address of the company was?

A. I told him to address it to Mr. Lynn.

Q. Did your father afterward show you a letter addressed to Mr. Lynn of the Panama Development Company, written in Spanish?

A. Yes, sir, he read it to me.

Q. He read it to you? A. Yes, sir.

Q. I will show you this letter dated Panama, the 26th of July, 1911, addressed Sr. E. A. Lynn, Los Angeles, California, written in Spanish, and show you the signature, Santiago de la Guardia, and I will ask you whether or not that was the letter which he read you.

(Testimony of Hernan de la Guardia.)

A. That is the letter he read to me, and that is his signature.

Q. And is that the letter that you referred to in United [262] States Exhibit 34, where you said, "my father withdrew his name from the company for political reasons"—Is that the letter that you referred to?

A. I referred to that letter and warned them.

Q. Showing you United States Exhibit 34, where you say, "my father withdrew his name from the company for political reasons," is this the letter that you refer to?

A. Yes, I think that is the letter.

Mr. REGAN.—I now offer this letter in evidence, dated Panama, the 26th day of July, 1911, addressed to "Sr. E. A. Lynn, Los Angeles, California, My dear Señor," signed *Santiago de la Guardia*.

Mr. SCHENCK.—To which the defendant objects on the ground that it is incompetent, irrelevant and immaterial and no foundation laid; the letter appears upon its face to have been addressed to one E. A. Lynn; it is not shown to ever have come to the notice of the defendant in this case; as to him it would be hearsay, and upon the further ground that if this letter was obtained from the office of the Panama Development Company, in Los Angeles, California, as we contend, and think we are able to show at this time, taken from there without any process of law at a time about four days subsequent to the arrest of this defendant, it violates the fifth amendment with reference to a person being compelled to give

(Testimony of Hernan de la Guardia.)

evidence against himself, the contention being here that this corporation and this man are one and the same thing.

Mr. SCHENCK.—I will state my objection all over again and then will so connect it down by stipulation throughout to each and every stage of the proceeding, in so far as every step of the proceeding may be affected thereby. That is the objection.

Mr. REGAN.—Up to now?

Mr. SCHENCK.—Or hereafter. [263]

Mr. REGAN.—Well, I don't want to make this go to too long a period of time.

Mr. SCHENCK.—Well, up to now then. The objection is to the introduction of each and every one of these letters, which were the result of the seizure, even prior to or subsequent to the arrest of the defendant without process, writ or warrant of any kind, are incompetent, by reason of their violation, that is, the method of procuring the same being a violation of the fourth and fifth amendments of the Constitution of the United States.

Second, that each and every letter that is not signed by the defendant, as having been written by him, that they are hearsay as to him, and not binding upon him, and no foundation laid connecting him with them. I think that covers the whole thing. Those that are not signed by him, or shown to have been in his possession or connected up with him in some way, are hearsay as to him; those that do bear his signature, or, rather, addressed to him, and were taken by virtue of the seizure and search prior to his

(Testimony of Hernan de la Guardia.)

arrest, are incompetent, under the Boyd decision. I think that expresses pretty nearly all there is to it. Now, the letter that was under discussion, Mr. Regan, and the one which was offered for evidence and to which my specific objection brought forth this argument, was the one which you had here. It would be 37. That is the one which your Honor has just ruled upon.

The COURT.—That is the one from the father.

Mr. SCHENCK.—That is the one from the father of this witness to E. A. Lynn, not shown at any time to have been in the possession or come to the knowledge of defendant Lyman, or the corporation, so far as that is concerned.

The COURT.—Well, this letter was a letter found in his private room. [264]

Mr. REGAN.—The last matter before the Court on Friday afternoon was the offer of this letter in Spanish in evidence, and I now withdraw that offer and, with the permission of the Court, I will ask to interrupt Mr. Guardia, who was on the stand, and introduce a witness for the purpose of identifying this letter.

Mr. SCHENCK.—No objection on the part of the defendant.

Testimony of W. I. Madeira, for Plaintiff.

W. I. MADEIRA, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I live in San Francisco. I am a postoffice inspector, and have been so for about nine years. I know

(Testimony of W. I. Madeira.)

the defendant Lyman. I saw him in San Francisco in September, 1911.

Q. I show you this letter written in Spanish addressed to "Panama, July 26, 1911, Senor E. A. Lynn, Los Angeles, Cal. My Dear Sir" and signed "Santiago de la Guardia," and I will ask you whether or not you ever saw that letter before?

A. Yes, sir; I did.

Q. Where did you see it? Where was it when you first saw it?

A. I took it out of the trunk of the defendant.

Q. Where? A. In my office.

Q. When? A. September 9, 1911.

Q. Had you prior to that time taken the defendant into custody?

A. The night previous; yes, sir. At the time I took the defendant into custody that letter was in a small trunk in the middle of his room where he was arrested. The trunk was open. [265]

Cross-examination.

(By Mr. SCHENCK.)

Q. You arrested him, did you?

A. I helped take him into custody.

Q. Did you take him to the Central Station in Frisco?

A. Yes, sir. It was about 7:30 in the evening. I did not look up the trunk before I left the room with him, but I shut the trunk.

Q. You don't remember how you got in the trunk the next day?

A. I know the trunk was not locked, because

(Testimony of W. I. Madeira.)

Morse strapped it. We picked up all the literature on the floor and put it in the trunk and shut it. There was literature all over the floor of the Panama Development Company.

Q. A whole trunk full?

A. A whole lot on the floor that was finally discarded. We put it back in the trunk and shut the trunk.

Q. You didn't have a search-warrant or writ or process? A. I had nothing but—no, sir.

Mr. REGAN.—Nothing but what?

A. A telegram from the United States Attorney to arrest the defendant.

Q. (By Mr. SCHENCK.) That was all the authority you had?

A. That a warrant for his arrest and a certified copy was being forwarded.

Q. When did you take the trunk away from the hotel to your office? A. The following morning.

Mr. REGAN.—I now offer in evidence the letter with the translation attached to it, identified by the witness, and ask that it be marked United States Exhibit 37.

Mr. SCHENCK.—The only objection now is the objection [266] based upon the Boyd Case.

The COURT.—The objection is overruled.

Mr. REGAN.—And may we, to save time, stipulate that each and every one of these documents obtained in the same manner have the same objection and the same ruling applied to it?

Mr. REGAN.—Based on the Boyd Case?

(Testimony of W. I. Madeira.)

Mr. SCHENCK.—Yes; and if there is any additional objection that I wish to urge, I will make it in addition.

Mr. REGAN.—That is all right. But your objection now goes purely to the ruling in the Boyd case, on the ground that it is a violation of the fourth and fifth amendment?

Mr. SCHENCK.—Yes, sir; the method of the seizure. No other objection is urged at this time.

Mr. REGAN.—Now, reading from the translation which the witness identified as having been attached to the Spanish letter, United States Exhibit 37,—

Mr. SCHENCK.—What is the date of that letter? You didn't read it.

Mr. REGAN.—July 26th, 1911. The date is not on the translation, but it is on the original. The letter in Spanish is signed Santiago de la Guardia.

(Said letter and translation are marked United States Exhibit 37, read in evidence, and is as follows:)

U. S. Exhibit No 37—Letter, de Guardia to Lynn.
E. A. Lynn.

My dear sir:—Upon my return from the United States, your official communication was received in which you advise me that I have been appointed a member of the Advisory Board of the Panama Development Co.

It was my first intention to accept this appointment and loan my services for the benefit of my country and help my son Hernan with my advice, but I

have advices that you, before you received my acceptance to your offer, published and scattered broadcast in the United States a prospectus in which you state I [267] was a member of this Advisory Board and also that you added *my* after my name my official title with the government and after the name of my son Hernan the title of my office.

Aside from this this prospectus contains exaggerated statements and promises when you haven't even acquired any lands in Panama nor have you incorporated or registered the Co. in this country.

I do not appreciate the method in which you have used my name and official title as it is not serious nor legitimate nor profitable to inspire confidence—I therefore advise you that I will not accept this appointment which you offer and I want you to erase my name and title from your prospectus which you went so far as to use without my authority and the insult given me by publishing this in the United States and which we know by rumor in Panama, which has surely not reached my son's office, which should have been natural.

My friend, Mr. Quelquejeu, who is one of the most honorable men in Panama is in Europe, but I am sure he will follow my action when he knows of it. For the interest in the enterprise which Mr. Lyman indicated and in which figures one of my sons. I will say to you that had reports and rumors commenced to be circulated about said Company, coming from American citizens who have read the prospectus, that you are not proceeding with seriousness and

(Testimony of Hernan de la Guardia.)

that your enterprise is a true calamity or downfall.

Signed

SANTIAGO DE GUARDIA.

[Endorsed]: 672—Crim. U. S. vs. *Morgan*. U.S. Exhibit 37. Filed October 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [268]

**Testimony of Hernan de la Guardia, for Plaintiff
(Recalled).**

HERNAN de la GUARDIA, recalled.

Direct Examination (Resumed).

(Mr. *Mr.* REGAN.)

Q. I show you a letter on the paper of the Panama Development Company dated Los Angeles, August 12, 1911, addressed to you and signed John G. Lyman, and I will ask you whether or not you received that letter through the mail? A. Yes, sir, I did.

(The letter was introduced and read in evidence, marked U. S. Exhibit 38, and reads as follows:)

**U. S. Exhibit No. 38—Letter, August 12, 1911, Lyman
to de la Guardia.**

(Letterhead of Panama Development Company.)

Los Angeles, August 12, 1911.

Mr. Hernan de la Guardia,

City of Panama,

Republic of Panama.

My dear Mr. Guardia:

I am in receipt of a lengthy letter from Mr. Ryan, outlining conditions in Panama as he found them and advising what he thought could be done, and have written him very fully in return.

He spoke of the check I sent you and stated that

it would be better had a draft been sent, but as I was using my own check for the Company's business, I wished to have a receipt which was why I sent a check. When everything is in working order and you have the Company's account open, then it will be an easy matter to transfer from one office to another, without the necessity of using a check.

In this connection, the amended Articles of Incorporation came yesterday and were sent to the Consul in San Francisco for his verification, and possibly they will be returned in time to be sent you by Saturday's post; if not, then by next mail, and with these in hand you will be able to file in Panama and do all that is necessary, not only to register the company there, but [269] to open a bank account under the authority already provided. The amended certificate reduced the capital to \$100,000, and the registration fee, I take it, in Panama, now will be \$200.

Regarding the 20,000 hectares in the Chiriqui Province, on which you can obtain a two years' option for \$5,000 gold, I have asked Mr. Ryan to look at that property at his earliest convenience and if he approves, we will take up the option. I suggested to him also that when exercising the option he had better have the title looked into by some competent lawyer in Panama, for we want to be absolutely certain regarding those titles before paying any money for properties.

In regard to the Government lands to be taken up in Cocle, where he is going to lay out the town of Agua Dulce, just as soon as he is ready to do this

and ascertains that he can do it, will send down \$10,000 for the 8,000 hectares, or 20,000 acres.

You all seem to have the impression down there that the company here had been offering lands for sale, representing them as their own.

H. de la G. Page 2.

August 12, 1911.

Nothing of this kind has been done, the only lands offered were Government lands and is distinctly understood on the part of the purchaser that this company is going to purchase the same for them from the Government, and they understand it that nothing is going to be taken up for them until they pay for the same, or rather have completed the first payment, otherwise the company would be getting lands in the names of various people and never be able to collect for it. This is all thoroughly understood and agreed upon by the company and the purchaser, and they have had no complaint whatever from anyone with whom they have had dealings, and I am strongly inclined to the belief that the complaints your father mentioned in his letter to Mr. Lynn came [270] from some disgruntled real estate agent, rather than a client of the Panama Company, and I trust you will look into this and see if this surmise is not correct. You know in this town, there are about three thousand real estate agents and naturally every one of them wish a prospective buyer to purchase here and spend his money here, for everything of that nature boosts this town, whereas, if they buy or go to Panama, the benefit is in Panama rather than here, and of course these people are doing all they can to knock the business of the Panama Company.

Your father ought to be able to appreciate this, and I am such he will when the facts are called to his attention.

It is manifestly impossible for the company to head off these stories or to conduct their business in such a way that if any one is maliciously inclined, they cannot at least circulate stories at a distance which will reflect on the operations of the company, but none the less, there is nothing in it, and there is not one person who has had dealings with the company who is not perfectly satisfied.

Mr. Redpath, who is a conservative old banker, and Mr. Smith, who has heretofore been connected with some very fine business houses, are both conservative, safe business men, and I must say I have never seen a proposition handled better, from a business standpoint, than these people who are conducting this business, and every one of their clients are well pleased, and I am very sure they will continue to be, for the company are carrying out all their promises as rapidly as it is humanly possible to do so, and all complaints you may have received down there, you will find upon investigation do not come from dissatisfied clients, but from some individuals who have their own axe to grind in knocking the business of the Panama Company, and you must expect this sort of thing, for just so long as settlers are encouraged to go from here to Panama, or investors are encouraged to change [271] their investments from here to Panama, then interested parties here who are effected by the change, are going to be disgruntled, but nevertheless these changes are going to work for

the benefit of Panama, and that after all is what you and I are concerned with, for our interests lie there.

I hope you will take immediate steps to secure the concession from the Government, covering 25,000 hectares down in the region you mentioned in your former letter, and the company here will at a very early date be able to locate a thousand families there, so that we may enjoy the full benefits of the concession you obtain. I think in view of the fact that the company here will have to do all the real work, in the way of financing the project and securing the families as well, that in offering you 10% interest in the project for obtaining the concession, you are being well taken care of.

I trust, too, you will carefully present to your father the plans of the company and secure his services, in connection with Mr. Fearon, and Mr. Quelquejeu has already accepted, to act as an Advisory Board simply, where it needs someone like this to pass on important questions and points as they must come up from time to time with the Company. This will involve them with no responsibility, but they will be amply rewarded, and what perhaps is more important to them, be rendering a distinct service to their country, for this Company here has no intention of turning back—it could not if it would and it would not if it could and so you may rest assured that they are going ahead and if they make mistakes down there, it will be because they are ill advised, and not because they are intentional. The best way to avoid these mistakes is to be properly advised, and I feel very certain the men you have

selected are just the ones to keep the Company's line of operations in the channel they should be.

It is more than likely that Mr. Smith, who speaks Spanish, [272] will go down at an early date, with a view of systematizing things at that end, so that no hitches may occur in the future, for when once things are thoroughly established and in good running order, there is no reason why they should not continue so. Already a considerable number of prospective settlers and purchasers of lands have gone from here, as the result of this Company's advertising, and there are many more to follow. In fact, the movement has not yet begun, and you are going to see a great boom in Panama, and when it does come, do not forget that it will be this Company's operations, more than anything which made this possible. It is all very well to let people read Government reports, that there are good lands in Panama and that they can be obtained from the Government on favorable terms, etc., but don't forget that it requires something more than this, and that is some one at this end of the line to push those lands forward, as well as the attractive possibilities down there, and thus stimulate interest and encourage emigration. That is what this company is doing, and if they derive a profit, as it is hoped and expected that they would from their operations, they are none the less rendering a real service to Panama, and that is the way it should be considered.

With warmest personal regards to you and to your distinguished father, I remain,

Most cordially yours,

JOHN G. LYMAN.

(Testimony of Hernan de la Guardia.)

(Envelope:) Los Angeles, Cal. Sta. C. 1911. Aug. 12, 3-P. M. Mr. Hernan de la Guardia, 117 Avenida Central, City of Panama, Republic of Panama. *via New Orleans.* (Canceled postage stamp.) (On back) (Panama received sign) 24 Ago 1911.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 38. Filed October 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [273]

Q. (By Mr. REGAN.) As president of the Panama Development Company, did you ever enter into a contract with the Panamanian Government with reference to the Panama Development Company acting as agent? A. No, sir.

Q. Did you ever see or were you ever told that there was any such contract with the Panamanian Government?

A. I never saw any such contract and I never was told that there was such a contract.

Q. Did you ever, at any time, as president of the Panama Development Company, arrange with the Panamanian Government to purchase land for anybody? A. I did not.

Q. Did you, as president of the Panama Development Company, ever know of any land or options on land held by the Panama Development Company?

A. I did not.

Q. Did you ever receive, as president of the Panama Development Company, from Lyman or anybody else, any papers to be filed with the Panamanian Government with reference to the purchase of land from the Panamanian Government?

(Testimony of Hernan de la Guardia.)

A. I did not receive any actual papers to be filed with reference to the purchase of any land—any Government land.

Q. What were the only papers that you received?

A. The only papers outside of the letters, that I received, were the Articles of Incorporation of the Company, and I went to the Secretary of Finance in order to inquire from him what would be the cost of incorporating the company and registering it, and I secured the information and wrote back to the company.

Q. What did you do with the Articles of Incorporation? Did you return them to the Panama Development Company?

A. I returned them back, because they had to be authenticated [274] by the Panamanian Consul in San Francisco before they could be filed there.

Q. And you never received any other papers to file with the Panamanian Government from the Panama Development Company? A. No, sir.

Testimony of M. de Haaff, for Plaintiff.

M. de HAAFF, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is M. de Haaff. I live in this city. My business is photo engraving and commercial photographer. I met the defendant in 1911.

Q. Under what circumstances?

A. I believe Dr. Lyman came up to the office and showed me a postal card, and asked me the price to reproduce that—make a map of it. It was a postal

(Testimony of M. de Haaff.)

card of the Canal Zone. A couple of weeks later I completed a set of plates for him. I made three or four colored plates for him.

Mr. REGAN.—I now offer in evidence this plate of Panama and the colored plates which are used in reference thereto and ask that they be marked United States Exhibit 39—A, B, C, and D.

I sent the bill for that work to the Panama Development Company. I think I sent it to the Alexandria Hotel—I remember now. The bill was paid promptly. I had to go to the office of the Panama Development Company and ask for payment. I saw Mr. Smith. Mr. Smith told me he had to have every bill O.K.'d. I don't remember who he told me would have to O.K. it.

Q. When did you next do business with Lyman or with the Panama Development Co.?

A. I think a few weeks after that I had a call from Mr. [275] Smith to come to Mercantile Place, and when I came down I had to look at another map that he had in the office and he wanted to find the price that a small reproduction would cost. The map was colored the same as it is here. It was in a frame hanging on the wall of the Panama Development Company. I had to re-photograph it in the back of the office of the Panama Development Company. From that photograph we made a drawing on top of the photograph. After the drawing we made a cut of it. Before I made a cut of it I showed the drawing to Mr. Smith. He told me to make several changes on it. I saw Dr. Lyman about the

(Testimony of M. de Haaff.)

drawing before I made the plate.

Q. Now, when you showed the drawing to Lyman, did he say anything to you about making certain indications on the plate or on the drawing?

A. One day I believe there was a man there. He turned me over to that man to make certain changes and indicate what that land is adapted for.

“Mr. REGAN.—Now, I show this plate and ask you whether or not that is the plate which you made from that drawing? A. Yes, that is the plate.

Mr. REGAN.—I offer the same in evidence and ask that it be marked United States Exhibit 41.

(The map is received in evidence and marked United States Exhibit 41.)”

Q. Now, calling your attention to the little indicators in the left-hand corner of this plate, a circle, sugar cane land; a triangle, timber; a square, coffee, and the letter B, bananas, etc., are those the marks that Lyman told you to indicate on the map—on the plate?

A. Well, he spoke to me about them, but the other man that was there he was the one that told me. He had just returned from Panama and he knew exactly what the land was; he was the [276] one. After the plates were completed they were sent to the Seg-nogram Press Publishing Company. The work was paid for by the Panama Development Company. I afterward called at the office of Lyman to get some photographs in order to make some half tones. Those half tones were pictures of timber land and timber. After I completed the half tones I sent

(Testimony of M. de Haaff.)

them to the Segnogram Press. The half tones were made at the direction of the defendant. I sent the bill to the Panama Development Co. I saw Mr. Smith in reference to the bill and he referred me to Dr. Lyman, who "OK'd" and Smith paid it.

Q. (By Mr. SCHENCK.) You mean that Mr. Smith pointed out to you a mistake that had been made by you in making a previous colored plate.

A. Yes, sir.

Q. And the mistake was a deviation in the colored plate that you had made from what the map originally would show? A. Yes, sir.

Q. And you simply made this to conform to the original map? A. Part of that and more to that.

Q. And there was something put on this at the request of Mr. Smith that did not appear on the map? A. Yes.

Q. Now, can you point out what part that was?

A. Those squares and arrows.

Mr. REGAN.—I offer in evidence United States Exhibit 41-E, which is a color map showing a line of railroad and little squares and arrows pointing to the same.

Mr. SCHENCK.—I have no objection to the colored plate as it stands except in so far as the three little squares are [277] concerned. In so far as they are concerned, they are hearsay to this defendant and not connected up with him in any way; he said Mr. Smith told him to put them on there, but it may go in with that understanding that there is no showing or connection of the change here with the

(Testimony of M. de Haaff.)

defendant in any way, shape, manner or form.

Mr. REGAN.—Yes, if Mr. Smith is not connected up closer with the defendant, then it may go out.

Cross-examination.

(By Mr. SCHENCK.)

Q. The first bill that you sent out you think was sent out to Lyman personally. A. I think so.

Q. Well, except the first one they were all directed to the Panama Development Company?

A. Yes, sir,

Q. And all charged to the Panama Development Company and the work done for the Panama Development Company, and practically all negotiations were with Mr. Smith in the premises except when you would go to collect the bill, and he would send you over and made you get Lyman's O. K.?

A. Only when the last came.

Q. That so-called big map—I will take up the cut with the three-colored plate, Exhibit 39-A, B, C, and D. This colored plate business, as I understand, is simply—there is your original cut, is it?

A. That is the black cut.

Q. That is the black cut, is it? A. Yes, sir.

Q. That shows everything that there is on the thing from which the cut was made?

A. All but the color.

Q. In other words, the use of these so-called color plates [278] does not have any effect upon the contents or showing of this except as it changes the color? A. The color underneath.

Q. Everything in this first exhibit, which is 39-A,

(Testimony of M. de Haaff.)

B, C and D, everything that was done there was done by your firm in an honest effort to reproduce in exactly the same color and exactly the same thing that was given you to reproduce? A. Yes, sir.

Q. And no intention to change by design or intent?

A. No, sir.

Q. The only change that was made in any way, shape, manner or form, that was made by design as distinguished from mistake on this map Exhibit 41, was the interspersing here of little indicators, like squares and circles and half-moons and diamonds interspersed throughout the face of the place to indicate the nature of the plate where that particular dot may have been placed on the face of it?

A. Yes, sir.

Q. And the explanation of the indicator sign is down there. A. Yes, sir."

Mr. SCHENCK.—Q. What I am trying to find out was, there was no change made except the one or two I have indicated, to wit, this indicator system—that is, the indicator system and explanation and interspersing of it? Besides that there were no changes made to make it deviate from an exact counterpart of that map, but the only changes were by reasons of mistakes made in order to make it conform? A. Yes, sir. [279]

Testimony of Clarence E. Riley, for Plaintiff.

CLARENCE E. RILEY, a witness called on behalf of the United States, being first duly sworn testified as follows:

I live in South Pasadena. My business is that of

(Testimony of Clarence E. Riley.)

photo engraver. I remember at one time working on a plate of a place called Agua Dulce. It was about three years ago.

Q. Do you remember seeing that man before?
(Counsel refers here to Mr. Pentland who is called into the room for the purpose of the question.)

A. Yes, sir.

Q. Is that the man who brought you the drawing?

A. He brought the preliminary job. A rough sketch. I haven't that rough sketch now. I never finished it. Mr. Pentland took it away. I made a charge for the work on my books. The date of the charge was June 20th, 1911.

Cross-examination.

(By Mr. SCHENCK.)

Q. How long prior to that had the work been done? You say it was charged June 20, 1911. When had the work actually been done?

A. We billed the work out immediately when it was done.

Q. It was finished then about June 20, 1911?

A. Yes, sir.

Testimony of F. F. Green, for Plaintiff.

F. F. GREEN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a commercial artist at present employed as a newspaper artist. In 1911, I was employed by the Bryan Garnier Company as a commercial artist. I remember making a drawing of Agua [280] Dulce in 1911.

(Testimony of F. F. Green.)

Q. I show you this plat of Agua Dulce and ask you whether or not that is a drawing that you made from the rough sketch which was brought to you.

A. Yes, sir.

Mr. REGAN.—I now offer the drawing just identified by the witness and ask that it be marked United States Exhibit 43. It is a drawing entitled “Agua Dulce Colony,” Province of Cocle, Panama, Panama Development Company. Home Office, City of Panama, Panama. U. S. Office, 216 Mercantile Place, Los Angeles, California.” And it shows a drawing of plats 12 wide and 9 deep, and altogether 100 *block* blocks of land. In the center is a square marked “Pueblo Agua Dulce. Sugar Mill.” And running through the map is a line marked “Panama-David Railroad” and a square marked “Railroad Station.” The blocks are each numbered.

Mr. REGAN.—Mr. Pentland, stand up. Is this the gentleman that came to see you with reference to the drawing? A. I couldn't be sure.

Cross-examination.

(By Mr. SCHENCK.)

Q. Is this the original drawing?

A. It is what is known to engravers as the original drawing. It is all my hand work except the color.

Testimony of R. C. Pentland, for Plaintiff.

R. C. PENTLAND, a witness called on behalf of the United States, being first duly sworn, testified as follows:

About the 12th of June, 1911, I was engaged with

(Testimony of R. C. Pentland.)

the Panama Development Company. I got that employment in their office on [281] Mercantile Place.

Q. Who did you see when you first went into the office of the Panama Development Company.

A. I saw Mr. Lynn, that is I spoke to him first. My purpose in calling there was to ascertain about what their proposition was—their land proposition—and he described it to me in a general way.

Mr. SCHENCK.—We object to all this as hearsay as to the defendant.

Q. (By Mr. REGAN.) Whom else did you see?

A. When I told Mr. Lynn that I wanted a position, he referred me to Mr. Redpath. I had a conversation with Mr. Redpath. I next met Mr. Smith. I was employed about the—2d or third visit I made to the office. Mr. Redpath engaged me. I outlined a plan for interesting people in Orange county and other districts, in land in Panama.

A. Did you confer with anybody in the Panama office with reference to the plan?

A. I conferred with Mr. Redpath and after he engaged me I talked with Mr. Smith.

Q. Did you prepare a plat of any land in Panama?

A. Yes, sir. I outlined the idea of it and had a draftsman prepare it. That was in June, 1911.

Q. Now, after you had prepared this rough draft, to whom did you show it first?

A. I first outlined the idea before the rough draft was made to Mr. Smith.

I had a conversation with the defendant with

(Testimony of R. C. Pentland.)

reference to the plat. I asked Mr. Lyman if land could be gotten in a given locality in Panama to sell, and he said that if could and at the time I suggested showing a plat to show such land and he said the matter would be taken up under consideration. I told Lyman that [282] Mr. Smith had referred me to him. After my interview with Lyman I had a conversation with Smith. I then prepared a rough draft of Agua Dulce. Mr. Smith, Mr. Lyman and myself had two or more conferences with regard to this rough draft. When I first submitted the first rough draft to defendant, it was not platted to the ocean, nor to the river. As a result of my conversations with Dr. Lyman and Mr. Smith I extended the plat so as to include the river and also the ocean. After I made this rough drawing I took it to Riley Moore and he didn't work fast enough and then I took it to the Garnier Co.

Q. Now, after the rough draft was extended to the ocean, and to the river, did you show it to Dr. Lyman before you took it to Riley Moore, for approval?

A. Yes, I took it to Dr. Lyman. He said he liked the looks of it and approved it. He didn't order me to take it and have it extended. Mr. Smith gave me the orders.

Cross-examination.

(By Mr. SCHENCK.)

The idea of this sketch was that I wanted to show this as a sort of general idea or rough draft to show where those lands were located.

Q. Now let me ask you, this plat here is, so to

(Testimony of R. C. Pentland.)

speak, the result of your, or carrying out of your idea to get a rough draft that you might show people approximately how things were situated down there?

A. Yes, sir.

Q. And you did not have any idea in your mind when you extended that to the ocean that you were putting forth something to your clients that was fraudulent?

A. Absolutely no idea of such a thing.

Q. But this map then was gotten up by you?
[283]

A. I gave the general idea to the draftsman in its preparation.

Q. You wanted a sort of a rough birdseye view of quick, ready reference that you could show your clients and prospective customers?

A. Yes, sir; so they would know relatively where they would be, one with the other, in case of purchase.

Q. Was there anything said at any conference which you attended, by you, with reference to moving the land so as to make it show a falsehood?

A. No, sir.

Q. Was there anything said by anyone at any of those conversations about getting up what you might call on the street a phony map?

A. Nothing of the kind, and I would have quit the job before I would have stood for it.

Q. And you believed then and you believe now that in its general way that map is approximately true?

(Testimony of R. C. Pentland.)

A. I believed then that they could deliver the goods; that it was an approximate platting of that area, and that they could deliver the goods.

Q. Now, as a matter of fact you simply located Agua Dulce down there where it is and then simply laid out your plat around that, not attempting to confine it to scale?

A. Oh, no attempt at scale whatever. Simply to show a chunk of land right in here by Agua Dulce and going down to the ocean or gulf or whatever it is, and to the river. As to the railroad, I couldn't swear to whether that was on the map then or not, but I was given to understand in the office by Mr. Smith that I didn't show that the railroad ran through Agua Dulce, and I accordingly put the railroad on there. He said that the proposed railroad as contemplated would run through there. [284]

Q. As a matter of fact, you gave an option on ten thousand acres of land here to one party, did you, or took part in the giving of it?

A. I was granted a verbal option on ten thousand acres of land in that locality for the purpose of organizing a syndicate to purchase it after they had inspected it by sending two of their own members down there to inspect it.

Q. And when you drew that, you understood that it had not been surveyed in accordance to this, but that it would be eventually if your proposition went through? A. Yes, I understood that.

Q. Then at no time did you ever make any changes on that map or make the map itself by virtue of any-

(Testimony of R. C. Pentland.)

thing said to you by Dr. Lyman that you should get up a map which would mislead people or defraud people or misrepresent the fact to people? You never got up such a map from anything he said to you?

you? A. Not from him or anybody else.

Redirect Examination.

(By Mr. REGAN.)

Q. This tract of land which appears on United States Exhibit 43 for Identification marked in red, that was the land that you were going to undertake to colonize?

A. Yes, sir. I never purchased that land from anybody. I never had any title to this land. I was to work on a colonization scheme of these ten thousand acres, but I never sold any of that ten thousand acres to any purchaser. I used that small part of Agua Dulce marked red, to indicate to purchasers where they could be located in that vicinity?

Recross-examination.

(By Mr. SCHENCK.)

Q. As a matter of fact, you had not had time to perfect [285] your colonization scheme at the time the United States Government swooped down on the office and closed it up?

A. I think I had about thirty-five members enrolled in that syndicate, and many more coming in. They were coming in fast and I expected in a couple of weeks to start the committee down there to see the land, and before that couple of weeks was up the United States Government closed them up.

Testimony of T. P. Smith, for Plaintiff.

T. P. SMITH, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am in the printing business. In 1911 I was a salesman for the Segnogram Company. About that time I met the defendant. He came into our downtown office to order some printing. The first order was prospectuses for the Panama Development Company. I had a conversation with the defendant in regard to this prospectus entitled "Gateway to Opportunity."

Q. I show you these sheets of paper and ask you whether or not it is the proof?

A. These are the proof sheets of the first prospectus. I got the original copy of this proof sheet from Dr. Lyman. After the proof sheet was made I showed it to Dr. Lyman. The corrections were made at Dr. Lyman's suggestion. Dr. Lyman gave me an order for the printing of these pamphlets. The order was given on the 20th of April for ten thousand, and they were delivered to the Panama Development Company at Mercantile Place.

Mr. REGAN.—I now offer in evidence the circular just identified by the witness entitled "Gateway to Opportunity" and ask that it be marked United States Exhibit 45.

(Said exhibit is marked United States Exhibit 45, is read in evidence and is as follows.) [286]

**U. S. Exhibit No. 45—Prospectus of Panama Dev.
Co.**

“Bird’s Eye View of Panama Canal.

(Table of Distances.)

PANAMA R. R.

was built by a New York Company in 1857, at a cost of \$8,000,000 and was acquired by the U. S. as part of the canal purchase. The road is 45 miles long and is now being double tracked. This road will be a great help in the construction of the canal.

PANAMA TO DAVID.

Railroad about to be built will open a marvelously rich country which is practically unknown, with a superb climate and a mean temperature below 80, the extreme fluctuations from which do not vary 10 degrees.

REPUBLIC OF PANAMA.

Government Lands.

THE GATEWAY TO OPPORTUNITY.

Never in the history of the world was there a greater certainty of making money than buying Panama Government lands at the present time.

Price \$5.00 per acre; \$2.50 down and \$2.50 in four years, with no taxes to pay until the final payment is made.

What the opening of the Panama Canal means few have any conception, yet the following data may give some idea. At the present time to ship from the west coast to a European or a New York port requires in the first instance a sea voyage of approximately 15,000 miles and to an Atlantic port 12,000

miles, which will be reduced by the opening of the canal to 3,600 miles to Europe and 1,900 miles to New York, which great saving will mean a tremendous development and unquestionably a great increase in land values. [287]

To take advantage of this to the fullest extent the Panama Government is now advertising for bids for the construction of a railroad from the City of Panama through the rich Province of Chiriqui to the City of David, 280 miles to the northwest which is the capital of the province and which has a delightful climate and a soil of great fertility, where coffee in large quantities is now being grown and where almost every product of the temperate clime, as well as more tropical plants, such as sugar cane and bananas, can be grown to perfection.

It is also a great cattle raising section, where cattle can be pastured the entire year without any protection or extra feeding, the grasses themselves being sufficient to fatten and are much like alfalfa.

Part of the government land is covered with very valuable hardwood timber, including mahogany and when there is an outlet for this, that alone will pay for the land many times over.

The savanna (prairie lands) while covered with a luxuriant growth of grass is neither swampy nor rocky, and an automobile can be driven over it in every direction.

The title to these lands is perfect and will come direct from the Panama Government to the purchaser.

Tracts can be provided of one, two or three hun-

dred acres, or even less, giving a part wood lands, part prairie and part high lands for coffee and low lands for sugar.

The sugar lands, particularly, will undoubtedly vastly enhance in value, as the sugar cane of Panama holds the highest amount of saccharine matter of any cane grown and after once planted will reproduce itself continuously. The government has recently granted an important concession relating to the erection of a sugar mill, removing the tax on sugar machinery, and, recognizing the enterprise as a public utility, has exempted it from all national and municipal taxes for a period of ten years. [288]

The cost of preparing the land and putting in sugar cane in the first instance is \$50 an acre and the first crop is harvested fifteen months thereafter and will pay for all the work, land and a good profit per acre. Land put in sugar cane will at once have a value of \$150.00 an acre from which a yearly return may be expected of not less than \$50.00 per acre.

Arrangements can be made to have lands put into sugar by contract, payable in installments running over two years in time.

With the opening of the Panama Canal, it is reasonable to expect these sugar lands will command from \$300.00 to \$500.00 an acre, as when the cane is once planted it requires little attention except cutting, which can be done under contract, the mill paying the owner of the land for the cane, which obviates the necessity of being present unless desired. This is practically as is done to-day in Cuba, a majority

of the wealthy sugar planters owning plantations there living in Spain, Paris or New York, and spending little or no time in Cuba except possibly during the time of cutting.

As the demand for sugar is constant, there is little danger of oversupply, which, however, can hardly affect Panama, as there is no country in the world that can produce it so cheaply, and all it has lacked heretofore was transit facilities which are now near at hand.

Growing bananas, too, is exceedingly profitable. How much so may be judged from the fact that the United Fruit Co., of Boston, has over 25,000 acres of bananas near Bocas del Toro and is the largest cultivator of public lands in Panama. It has one plantation alone of 40 square miles.

Along the Costa Rican border is a belt of citrus fruit land which cannot be surpassed the world over. Here oranges, grape fruit, mangoes, pineapples, etc., grow to perfection. With the opening of the canal the markets of the world will be opened [289] to this heretofore closed region, the lands of which can now be obtained almost as a gift, yet in a few years are destined to become among the most valuable on this Continent.

While the amount of government land that can be acquired by one person or a corporation is unlimited, four-fifths of the land *land* acquired must be cultivated and fenced within four years or the title will lapse to the government. This is to prevent very large tracts being held purely for speculation. Any moderate amount can be cultivated without any difficulty, as the law is very liberal on this point,

allowing from twelve to thirty feet between plants.

Fencing, too, is very cheap, barbed wire with live posts of the jobite tree being usually employed. (A limb cut from the jobite tree and stuck in the ground will grow up a tree without cultivation.) The average cost being one cent per lineal foot. It will thus be seen the laws are all that could be desired, as they do not require residence and four years may be had in which to complete title with no taxes to pay during that period or title may be perfected at any time. Arrangements can be made to have all work, including fencing, done under contract, the price of cultivation varying with the crop and from one-half to two-thirds payable from the crop itself.

Among the products of the temperate zone which grow luxuriantly in parts of Chiriqui giving two *two* to three hundred bushels to the acre, are white (Irish) potatoes, for which even now there is a ready market on the Isthmus, yet the natives are so indolent they will not take the trouble to raise them, and the same thing may be said of practically everything that is grown. Yet good labor can be had and Chinese Coolies and all other contract labor brought in without limit, there being no such thing as union labor. This is not stated as a reflection on union labor, but merely as a fact, for every white man who has [290] gone into this country has almost immediately become a land owner and finds it more profitable to work for himself than for others, it being an ideal country for the man with small means, although capitalists naturally profit greater in proportion.

What the chances really are for a man with small capital is best shown in the case of Leslie Wilson of California, who arrived in the province of Chiriquí twelve years ago with a cash capital of \$200.00; to-day he has a plantation of \$5,000 acres of as good land as there is in Chiriquí, and easily worth \$50,000, also several thousand head of cattle and as fine a house as one would care to live in. Certainly not a bad record for the time and capital invested, considering the fact that during this period Panama has been practically without markets or transit facilities except small schooners plying along the coast. While Mr. Wilson may seem to have done well, his lands within the next five years will easily be worth a million dollars. What has been accomplished by him will be repeated by many others, and to all those desiring it, we will place every facility at our disposal to help them achieve like success.

Certainly never again will such an opportunity present itself, and no time should be lost, for the choice lands will soon be gone.

If desired, applications for lands can be made on the enclosed form and it should be stated whether sugar, banana, coffee, grazing, timber or citrus fruit lands are desired, as well as the number of acres, accompanying the same with a check at the rate of \$2.50 an acre for the number required, on receipt of which we will make prompt application through our representative in Panama, and the provisional title from the government will be issued direct to the purchaser. As earlier stated, the title

can be completed at any time within four years and no taxes will become due until one year from the date of completion of title. [291] Panama taxes are extremely light.

Timber lands do not require cultivation, but only one-fifth of timber lands can be taken in proportion to the whole number of acres applied for.

As between the various lands there is little to *chose*; all will prove profitable, coffee probably the most, but it requires five years for the trees to reach maturity, and these lands should only be taken by those who can afford to pay and wait. Sugar lands will give a very early return and considering their small cost of development, are extremely desirable.

There will be many fortunes made out of sugar lands.

PANAMA DEVELOPMENT COMPANY.

216 Mercantile Place,
Between Fifth and Sixth Streets,
Los Angeles, California.

Telephones:

Home A3425

Bdwy. 1050."

On the back:

"The Gateway to Opportunity," and a picture entitled

"Loading Bananas in Panama.

Bananas are placed in canoes at Gatun, on the Chagres River for shipment."

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 45. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(Testimony of T. P. Smith.)

Q. (By Mr. REGAN.) Showing you that paper marked "Land Agreement," I will ask you whether or not that is a proof *of* a copy?

A. It is a copy that I received from Dr. Lyman. The corrections on the original copy were made by me at Dr. Lyman's direction. [292]

Q. I now show you this paper marked Power of Attorney. Is that a copy?

A. The original copy. I received it from Dr. Lyman. The paper you show me written with a lead pencil "Panama Development Company" is a copy I wrote myself from the dictation of Dr. Lyman, and after receiving the copies I have just identified I printed the same after the corrections had been made by Dr. Lyman, or at his personal direction. Dr. Lyman ordered 3,000 of these on the 10th day of May, 1911, and they were printed by the Segno-gram Company and delivered."

Mr. REGAN.—I now offer in evidence the finished proof which the witness has just identified, and the copies of which the witness has just identified.

(Marked United States Exhibit 46, real in evidence as follows):

**U. S. Exhibit No. 46—Land Agreement of Panama
Dev. Co.**

PANAMA DEVELOPMENT COMPANY.

LAND AGREEMENT.

THIS AGREEMENT made and entered into this
— day of —, 1911, by and between the Panama
Development Company, a corporation hereafter

known as the party of the first part, and — of —, party of the second part.

WITNESSETH:

The said party of the second part, being desirous of purchasing — acres of Government land in the Province of —, Republic of Panama, and whereas the party of the first part, through its authorized agents, is able to locate and purchase said land as an agent for the party of the second part.

NOW, THEREFORE, the said party of the second part does hereby authorize, appoint, designate and name the PANAMA DEVELOPMENT COMPANY as — true and lawful agent and attorney to purchase in [293] the name of the party of the second part — acres of agricultural land suitable for the cultivation of — and — acres of timber land in the Province of —, Republic of Panama.

IT IS FURTHER AGREED that for and in consideration of the party of the first part through its authorized agents locating and purchasing said lands, the party of the second part hereby agrees to pay to the party of the first part the sum of \$2.50 per acre for each and every acre so located and purchased.

AND IT IS FURTHER AGREED by and between the parties hereinbefore mentioned, that a further sum of \$2.50 for each and every acre so located and purchased shall be paid to the party of the first part within a period of four years, it being optional upon the party of the second part as to when — shall complete title during the period named. It being mutually understood and agreed

that the party of the second part shall not be called upon to pay any interest or taxes under this agreement.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

_____ (Seal)

_____ (Seal)

Signed, sealed and delivered in the presence of

_____ (Seal)

PANAMA DEVELOPMENT COMPANY.

LAND AGREEMENT.

THIS AGREEMENT made and entered into this
— day of —, 1911, by and between the Panama
Development Company, a corporation hereafter
known as the party of the first part, and [294]
— of —, party of the second part.

WITNESSETH:

The said party of the second part, being desirous of purchasing — acres of Government land in the Province of —, Republic of Panama, and whereas the party of the first part, through its authorized agents, is able to locate and purchase said land as an agent for the party of the second part.

NOW, THEREFORE, the said party of the second part does hereby authorize, appoint, designate and name the PANAMA DEVELOPMENT COMPANY as — true and lawful agent and attorney to purchase in the name of the party of the second part — acres of Agricultural land suitable for the cultivation of — and — acres of timber land in the Province of —, Republic of Panama.

IT IS FURTHER AGREED that for and in consideration of the party of the first part through its authorized agents locating and purchasing said lands, the party of the second part hereby agrees to pay to the party of the first part the sum of \$2.50 per acre for each and every acre so located and purchased.

AND IT IS FURTHER AGREED by and between the parties hereinbefore mentioned, that a further sum of \$2.50 for each and every acre so located and purchased shall be paid to the party of the first part within a period of four years, it being optional upon the party of the second part as to when — shall complete Title during the period named. It being mutually understood and agreed that the party of the second part shall not be called upon to pay any interest or taxes under this agreement.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

_____ (Seal)

_____ (Seal)

Signed, sealed and delivered [295] in the presence of

_____ (Seal)

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I do hereby constitute and appoint SENOR HERNAN DE LA GUARDIA my true and lawful attorney with full power of substitution for me and in my name, place and stead to locate and purchase Government land in the Republic of Panama, and

to attend to all matters pertaining to same with all the powers I would possess if personally present.

IN WITNESS WHEREOF I have hereunto set my hands and seal this —— day of ——, 1911.

(Seal)

Signed, sealed and delivered in the presence of

(Seal)

PANAMA DEVELOPMENT COMPANY.

Received on the within contract the sum of —— Dollars (\$——).

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 46. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

“After that I received an order for some stationery for the Panama Development Company, the copy being in my handwriting and done at the dictation of Dr. Lyman. The order was received from Dr. Lyman. Subsequently I received an order from Dr. Lyman for the printing of the booklet you now hand me in a brown cover and headed on the outside ‘Panama Development Company.’ I received the copy for this from Dr. Lyman, and showed him the proof before the finished product was made. 5,000 of these were ordered [296] May 15th, 1911, and delivered to the Panama Development Company.”

Mr. REGAN.—I now offer the same in evidence and ask that it be marked U. S. Exhibit 48.

(Mr. Regan thereupon read the exhibit in evidence, which reads as follows):

**U. S. Exhibit No. 48—Prospectus of Panama
Dev. Co.**

**PANAMA
DEVELOPMENT
COMPANY.**

Authorized Capital
\$1,000,000.00.

(All fully subscribed.)

Principal Office:

City of Panama, Republic of Panama.

Surcousals:

City of David, Province of Chiriqui,
Los Angeles, California,
216 Mercantile Place.

(First page:) Panama Development Company,
Panama Development Company.

OFFICERS.

HERNAN de la GUARDIA....President.

JOHN REDPATHVice-president.

I. N. McDONALD.....Treasurer.

L. R. SMITH.....Secretary.

E. A. LYMAN.....Assistant Secretary.

ADVISORY BOARD IN PANAMA.

SANTIAGO de la GUARDIA,
Procurador General de la Nacion.

C. QUELQUEJEU,
HERNAN de la GUARDIA,
Procura Dunia. [297]

(Second page:) Panama Development Company.
Fortune meets the thrifty man half way, but grips

the hand of him who sees the future through the present.

Those who looked forward ten years ago and saw Los Angeles, Seattle, Spokane, Vancouver and Winnipeg as they are now, to-day count their wealth by *hundred of thousand* of dollars, all of which was realized from very small beginnings.

(Third page:) Panama Development Company.

THE PANAMA DEVELOPMENT COMPANY was devised to aid foreign investors to acquire Government lands in Panama and to take charge of the development of same, if desired.

Under its supervision it will be possible for the small owner to have his holdings cultivated to the greatest advantage with the lowest possible cost.

Then, too, the methods of payment covering such work have been arranged on an exceedingly liberal scale, the idea being to facilitate the development of the country, rather than to make a profit from its operations.

There is no doubt but that the next few years will witness a tremendous change in Panama, and particularly in the Chiriqui Province, which in addition to its almost perfect climate has a soil of marvelous fertility.

Ordinarily, Pioneers have to undergo many hardships and discomforts in developing their lands, but those who avail themselves of this Company's services, will have all their rough work done for them,

(Fourth page:)

and their properties turned over in a well-developed state.

As the Panaman Government, when issuing a definite title, [298] certifies as to the amount of cultivation done, it *leave* nothing to be desired from the investor's standpoint, as it assures him as to the work accomplished, even though he be not personally present to inspect the same.

In considering the future of this section of Panama, it must not be forgotten that no place in the world can show a soil of greater fertility, which in itself is a strong point when considering its possibilities.

Along the Costa Rican border are citrus and coffee lands, which can now be had at \$5.00 per acre, which five years hence will almost certainly be worth \$1,000.00 an acre. The oranges grown in this region are particularly fine, and as they ripen at a season of the year (November 1st), when there is no other fruit in the market, they will command the highest possible price.

To plant and care for an acre of or-

(Page five) Panama Development Company
ange trees for a period of four years means a total cost of \$300.00 per acre, which if done under contract can be divided so that the expense will not be burdensome; payments being required as follows:

\$100.00 per acre on the commencement of work.

\$100.00 two years from that date.

\$100.00 four years thereafter.

From which time the grove should be in bearing and returning a good income.

For a crop which will more quickly reach maturity, and one which is also very profitable, sugar is

strongly recommended, as the land can be cleared and put in cane for \$50.00 per acre.

Here the payments required are:

\$25.00 per acre when the land is cleared and planted, and [299]

\$25.00 per acre from the first crop harvested.

As cane when once planted will reproduce itself continuously for at least fifteen years, and as it can be sold standing, it is an ideal crop for those who do not want to oversee the work.

(Page six) Panama Development Company

The possibilities are so great, and there will be so many profitable opportunities resulting from the opening of the canal, and building of the new railroad, that it is almost impossible to treat of same in this small leaflet; but we would be glad to answer any inquiries upon request.

Our advise, however, to investors, is to take up as much Government land as possible, and at once! Secure with this, ample time can be had to determine what is best to be done, as the Government allows four years to complete title, and long before that time has expired the canal will be opened, and the dream of five centuries realized.

As we have no lands of our own to sell, and only act as Brokers on behalf of clients, and as all Government lands are the same price, we have nothing to gain except by serving them to the best possible advantage.

We may say here, we can do much better for Clients than they could do for themselves, even

(Testimony of T. P. Smith.)

though in Panama, as we have Experts familiar with the coun-

(Page seven) Panama Development Company.

try, who know where the best lands are for any particular purpose desired.

The provision of the Government requiring the lands to be cultivated within four years, means that the country will be rapidly [300] filled up and settled; and with the completion of the canal and opening of the new railroad, will make every part accessible. Those who wait, however, to ride through the country in a Pullman car, will find all the Government land gone, and it is the wise investor who, appreciating what these changes will mean, acts without delay.

We would strongly advise Clients not to wait one day, or hour, in filing an application for lands, which application will be filed and filled by the Government in the order received by us.

Correspondence invited.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets,

Los Angeles, California.

Broadway 1050.

Home A-3425.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 48. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—Q. I now show you a paper marked “Application for Land” and ask you whether or not

(Testimony of T. P. Smith.)

the Segnogram Company printed that.

A. Yes, sir; I received the original order from Dr. Lyman.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 49.

(Said paper is thereupon marked United States Exhibit 49, is read in evidence, and is as follows:)

U. S. Exhibit No. 49—Application for Land.

APPLICATION FOR LAND.

PANAMA DEVELOPMENT COMPANY.

216 Mercantile Place,

Los Angeles, California. [301]

Dear Sirs:

Enclosed please find \$——, for which please purchase for my account —— acres of Government land in the Republic of Panama, suitable for the cultivation of ——, and —— acres of timber-land.

I further agree to pay you the sum of \$2.50 per acre for each and every acre so purchased for my account within a period of four years, it being optional with me as to when I shall make payment during the period named, and it is mutually understood and agreed that I shall not be called upon to pay any interest or taxes under this agreement.

Name _____

Address _____.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 49. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

“The WITNESS.—The Segnogram Company

(Testimony of T. P. Smith.)

printed 65,000 copies of the document marked U. S. Exhibit 50, of the finished product marked U. S. Exhibit 50, the copy of which was received from Dr. Lyman, the changes in the copy being made by himself at Dr. Lyman's direction, and the corrections upon the first proof being made by me at defendant's direction."

Mr. REGAN.—Q. I now call your attention to a circular entitled "Panama Sugar Estates, Limited, authorized capital, \$2,500,000—500,000." I will ask you whether or not the Segnogram Company printed these?

A. Yes, sir. At the request of Dr. Lyman. The original copy was received from Dr. Lyman, the proof shown to him and corrected by me at his direction.

Mr. REGAN.—I now offer the finished product.

Mr. SCHENCK.—Objected to simply on the ground that it is not within the issues. [302]

The COURT.—Well, I am going to let it be marked for identification. I don't see any connection with it myself yet.

Mr. REGAN.—That will be United States Exhibit 51 for identification and with that as part of the exhibit will be the copy and the proof.

"The WITNESS.—The stationery marked U. S. Exhibit 52 was printed by the Segnogram Company on the order of Dr. Lyman, from a copy received from him, and were sent to the Panama Development Company's office. The stationery marked U. S. Exhibit 53 was also printed at the direction of Dr.

(Testimony of T. P. Smith.)

Lyman. The pink folder entitled 'Panama Lands' on one side, and on the other side 'The Land of Opportunity' was printed by the Segnogram Company at the direction of Dr. Lyman. 65,000 of these folders were printed. I would say 5,000 were delivered to the Panama Development Company, and 60,000 went to a distributing company. The original copy was received from Dr. Lyman, and is the proof now in my hand. The memorandum on the back of the pink folder I made myself. That is what we call a dummy in the printing business, and was merely my instructions to the plant. Those instructions were received from Dr. Lyman, and it was written down pursuant to instructions I received from him.

Mr. REGAN.—I now offer in evidence the finished product and the copy, proof and memorandum just identified by the witness and I ask that they be marked U. S. Exhibit 54, 54-A, B, C, D, and E.

(The exhibits were so marked, and Exhibit 54-A was read in evidence.)

The WITNESS.—65,000 copies of the circular entitled 'Timber Lands in Panama' *in read*, marked U. S. Exhibit 55-A, were printed by the Segnogram Company, the original copy was received from Dr. Lyman and they were delivered either to Dr. Lyman's office or to the distributing company. The proof was [303] shown to Dr. Lyman. The Segnogram Company printed 1,000 maps from U. S. Exhibit 41, at the direction of Dr. Lyman. I sent one of the press proofs to Dr. Lyman.

(Testimony of T. P. Smith.)

(A copy of the finished map just testified to was then introduced in evidence and marked U. S. Exhibit 58.)

The WITNESS.—The map of the Republic of Panama with the map of Agua Dulce on the back was printed by the Segnogram Company at the direction of Dr. Lyman, and afterwards delivered to the office of the Panama Development Company. (The map identified by the witness was introduced in evidence and marked U. S. Exhibit 59.)

Mr. REGAN.—Referring to Exhibit 59, there appears thereon red squares indicated by arrows, and a red square indicated by an arrow saying 'Citrus Fruit Land,' with an arrow saying 'timber land' and another with an arrow indicating District of Agua Dulce Sugar Land.

Q. Now, at whose direction were those representations printed upon that map? A. Dr. Lyman.

Q. And that was made by the color plates which you had received from de Haaf? [304]

A. Yes, sir.

Q. This insertion here 'This map is a reproduction of the one prepared in the office of the War Department, U. S. A., showing the line of the new railroad from Panama to David, together with an explanation of the lands adapted to the various tropical products, arranged by Mr. E. D. Ryan, for 10 years, identified with tropical agriculture in Panama for the United Fruit Company, having charge of a plantation 8 square miles in extent. See other side for map of Agua Dulce showing lands still open for location';

(Testimony of T. P. Smith.)

where did you get that statement?

A. Dr. Lyman.

Q. For the purpose of printing it on this map?

A. Yes, sir.

Q. Calling your attention to the back of United States Exhibit 59, which shows a plain map of Agua Dulce, province of Cocle, Panama, similar to United States Exhibit 56, and below that printed

“Real estate is the back bone of all wealth. It was here at the down of creation; it will be here at the end of Time.

\$375,000,000 is now being spent in Panama. Does any one think this tremendous development will not increase the price of Panama lands?

Millions of people own their own farms. Why not you?

Panama Government lands, now open to all on equal terms, are among the most fertile in the entire world. The present price of \$5.00 per acre will expire August 1st. The opportunity to buy at any price will soon be gone.

Even if uncultivated these lands will be worth \$20.00 an acre by the time the Canal is opened. Arrangements can be made whereby the lands can be cultivated on shares, so that all an investor need do is to purchase the raw land from the Government and the development work can be paid from the crop itself, and [305] the land put on an income-paying basis.

Why not place yourself in the income class and be a landlord rather than a tenant?

(Testimony of T. P. Smith.)

Do you know that nine-tenths of the tropical agriculture is in the hands of absent landlords?

Do you know that tropical agriculture stands at the very forefront of profitable enterprises?

A Boston Company has 20,000 acres of Panama public lands under cultivation, which cost less than \$100,000 four years ago. Their reported profits last year exceeded \$11,100,000. This year they will have 30,000 acres under cultivation.

There is no mine, oil well, or industrial proposition in the whole civilized world that can show a greater percentage of profit than is presented by the history of those now engaged in the cultivation of Panama public lands.

Why not participate in this? Investigation will cost you nothing. Do it NOW.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Sts.,

Los Angeles, California.'

Was that printed on there by you?

A. Yes, sir.

Q. At whose direction? A. Dr. Lyman's.

The WITNESS.—The map marked U. S. Exhibit 59 was printed from the plate marked U. S. Exhibit 41 for identification, as the plate at that time existed. We printed 5,000 of the maps, a copy of which is marked U. S. Exhibit 60, at the direction of Dr. Lyman, and delivered them to the Panama Development Company. The reading matter and data on

(Testimony of T. P. Smith.)

the map appearing on the Agua Dulce side were received from Dr. Lyman. The matter on the back of U. S. Exhibit 60 is *that* same as that on the back of U. S. Exhibit [306] 59, except the following: 'Panama Government lands now open to all on equal terms, are among the most fertile in the entire world. The present price of \$6.00 per acre will soon expire. The opportunity to buy at any price will soon be gone.'

Q. (By Mr. REGAN.) At whose direction was the change made from 'The present price of \$5.00 per acre will expire August 1st' to the statement 'The present price of \$6.00 per acre will soon expire'?

A. Doctor Lyman.

Q. Now, calling your attention to the side of United States — 60, 'Map of the Republic of Panama,' was anything done in reference to that plate United States Exhibit 41, after the order was given for United States Exhibit 60 and before it was fully printed? A. Yes.

Q. What was done?

A. An alteration of the plate.

Q. By whose direction? A. Doctor Lyman's.

Q. What did he tell you with reference to the plate?

A. He told me to send the plate to de Haaf, to have an alteration made.

Q. What was the alteration? What did he say?

A. He removed the lines in this bay indicating a part of that island.

Q. To remove the island from Montijo Bay?

(Testimony of T. P. Smith.)

A. Yes, sir.

Q. Was that done? A. Yes, sir.

Q. The plate was sent to de Haaf?

A. Yes, sir.

Q. And returned to you? [307] A. Yes, sir.

Q. And United States Exhibit 60 which you hold in your hand was a correct reproduction of that plate as it existed at that time?

A. With the alteration as made; yes, sir.

Q. (By Mr. REGAN.) Now, in reference to the printing of the words 'Montijo Bay,' in heavy purple on United States Exhibit 60, and on United States Exhibit 59, at whose direction was that heavy impression of purple ink used? A. Doctor Lyman's.

The WITNESS.—In July or August, 1911, we received a re-order for stationery for the Panama Development Company contained in a letter from L. R. Smith, that came through the mail. We received a subsequent order for the land agreement and power of attorney, a copy of which is marked U. S. Exhibit 46, July 12, from Dr. Lyman. We printed 65,000 of the four-page circular entitled 'Timber Resources of Panama' you now hand me; the order was received July 20, 1911, from Dr. Lyman, and part of the circulars were sent to the Panama Development Company and the balance to the distributors. (Said pamphlet was marked U. S. Exhibit 62, introduced and read in evidence.) At the time we printed U. S. Exhibit 62, we printed some circulars in the form you now hand me, at the request of Dr. Lyman, the

(Testimony of T. P. Smith.)

copy being furnished by him, and on completion they were sent to the Panama Development Company. (The circular just identified by the witness was then offered and read in evidence, marked U. S. Exhibit 63, and read as follows:

**U. S. Exhibit No. 63—Circular of Panama Dev. Co.
TO PROSPECTIVE BUYERS OF TIMBER
LANDS.**

Should you purchase these timber lands and not find them exactly as represented in the pictures, we will return the full amount of your first payment at any time within four years or before the final payment is due. [308]

This will give you ample opportunity to make a personal inspection of the lands. Surely the terms and conditions under which they can be acquired are very favorable, and as an investment likely to yield large returns, we believe they have no equal.

This is your opportunity for a fortune. Do not let it vanish before your eyes, for such a chance can never occur again.

PANAMA DEVELOPMENT COMPANY,
216 Mercantile Place,
Between Fifth and Sixth Streets,
Los Angeles, California.

APPLICATION FOR LAND.

PANAMA DEVELOPMENT COMPANY,
216 Mercantile Place,
Los Angeles, California.

Gentlemen:

Enclosed please find \$—— for which purchase for

my account at \$6.00 per acre, payable \$3.00 per acre upon application and \$3.00 per acre within four years, — acres of Government timber lands in the Province of Veragua.

I further agree to pay you the sum of \$3.00 per acre, as above specified, within a period of four years, it being optional with me as to when I shall make the payment during the period named.

It is mutually understood and agreed that I shall not be called upon to pay any interest or taxes under this agreement, and, in the event of the timber lands not being as represented, that my preliminary payment of \$3.00 per acre shall be returned in full, upon assignment to you of all my right, title and interest in the lands acquired.

Name _____.

Address _____. [309]

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 63. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The witness identified a letter as having been received by mail and pursuant to which, 500 letterheads and 500 second sheets were printed and delivered in conformity with the instructions contained therein. Said letter was introduced and read in evidence, marked U. S. Exhibit 64, and is as follows:

(Testimony of T. P. Smith.)

**U. S. Exhibit No. 64—Letter, July 19, 1911, Panama
Dev. Co. to Segnogram Press.**

(Letterhead Panama Development Company.)

Los Angeles, July 19, 1911.

Segnogram Press,

1719 Kane Street,

Los Angeles, California.

Gentlemen:

Kindly deliver to Dougherty & Smith, 553 I. W. Hellman Building, 500 letterheads and 500 second sheets. The letterheads to be the same style as the one upon which the letter is written with second sheets to match.

Yours very truly,

PANAMA DEVELOPMENT COMPANY,

By L. R. SMITH.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 64. Filed October 22, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The WITNESS.—On the 27th day of July, 1911, we received an order for 1,000 agreements for the cultivation of land from the defendant which were printed and delivered to the Panama Development Company. We received the copy from Mr. Lyman, the handwriting at the top of the copy being his. (The finished product was introduced and read in evidence and marked U. S. Exhibit 66-A; the copy was introduced and read in evidence and [310] marked U. S. Exhibit 66-B, U. S. Exhibit 66-A reading as follows:)

**U. S. Exhibit No. 66—A—Agreement for Cultivation
of Land of Panama Dev. Co.**

AGREEMENT.

for the cultivation of land on shares without cost to the owner of the land other than one-half the crop produced.

AGREEMENT made this — day of — nineteen hundred and eleven, between the PANAMA DEVELOPMENT COMPANY, a Corporation, party of the first part, and — of —, party of the second part.

WITNESSETH:

WHEREAS, the party of the second part is owner of certain Sugar lands in Panama, located in the Province of Cocle, Panama, and whereas the party of the second part desires the same cleared, cultivated and planted to Sugar Cane.

NOW THEREFORE, it is mutually agreed by and between the parties hereto, that the party of the first part in consideration of receiving one-half the crop, will clear or cause to be cleared — acres of sugar land, planting the same with sugar cane and harvesting and selling the crop, and take one-half of net return in full payment of same.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the party of the first part will render the party of the second part true and accurate accounts of expenses and disbursements, together with receipts from sugar cane, and that these accounts will be certified to by a competent auditor, approved by both parties. [311]

FURTHERMORE, that the party of the second part may at all times have access to the accounts covering said development work.

This agreement to continue for four years from date to expire ——— nineteen hundred and fourteen, unless previously dissolved by mutual consent.

Witness our hands and seals this ——— day of ——— Nineteen hundred and eleven.

PANAMA DEVELOPMENT COMPANY,

By _____.
_____.

Witness:

_____.

This company, having undertaken to place settlers and secure [312] development of several hundred thousand acres of Panama Government lands to illustrate what these lands are capable of doing, is taking charge of the development, for the first owners, who can have their lands cultivated on shares, thus avoiding the necessity of the owners advancing any money other than buying the raw land from the Government.

As sugar lands can be placed upon an income-producing basis within a period of eighteen months there is every incentive at the present time for buyers to acquire as much land as possible, as the development and cultivation of the same can now be arranged on much more favorable terms than will be possible later, for with the filling up of the country land, owners will be expected to attend to their own cultivating.

Where land is put into sugar cane on shares, it should yield a net return to the owner of not less

than \$25.00 per acre at the expiration of the first eighteen months, and a like sum every year thereafter during the life of the agreement.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Streets,

Los Angeles, California.

(Second sheet:)

APPLICATION FOR LAND.

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Los Angeles, California.

Dear Sirs:

Enclosed please find £—— for which please purchase for my account at £1 per acre: Payable 10/— per acre upon application and 10/ per acre within four years, —— acres of Government agricultural lands in the district of Agua Dulce, Province of Cocle, Republic [313] of Panama, suitable for the cultivation of Sugar.

I further agree to pay you the sum of 10/— per acre as above specified within a period of four years, it being optional with me as to when I shall make the payment during the period named. It is mutually understood and agreed that I shall not be called upon to pay any interest or taxes under this agreement.

Name _____.

Address _____.

_____.

(If you wish the land cultivated, sign the agreement on the back of the application for land and re-

(Testimony of T. P. Smith.)

turn. The agreement regarding cultivation binds you to nothing except to permit us to develop the land on shares, without cost to yourself, and if thus cultivated it should be placed on an income-producing basis within 18 months. Should you desire, you may add anything to the agreement which you feel will further protect your interests.)

PANAMA DEVELOPMENT COMPANY,

216 Mercantile Place,

Between Fifth and Sixth Sts.,

Los Angeles, California.

July 27, 1911.,

The handwriting at the top of U. S. Exhibit 66-B was read in evidence and is as follows:

**U. S. Exhibit No. 66-B—Agreement for Cultivation
of Land of Panama Dev. Co.**

‘Agreement for the cultivation of land on shares without cost to the owner of the land other than $\frac{1}{2}$ the crop produced.’

The WITNESS.—We received an order for some application blanks on the 31st of July, 1911, from Dr. Lyman. 65,000 of these were printed and delivered to the Panama Development Company and the distributors. On August 7, 1911, we received an additional order from Dr. Lyman for 12,000 of the prospectuses entitled ‘Gateway to Opportunity’ which were printed and delivered to the Panama Development Company. (The copy of prospectuses identified [314] by the witness was introduced in evidence and marked U. S. Exhibit 68-A.)

(Testimony of T. P. Smith.)

Mr. REGAN.—I now offer in evidence the copy from which U. S. Exhibit 68—A was printed, just identified by the witness, and ask that it be marked U. S. Exhibit 68—B.

Mr. SCHENCK.—No objection at all.

Mr. REGAN.—Calling your attention to United States Exhibit 68—B, on the first page, the writing in ink where it appears ‘\$5.00’ is changed to ‘\$6.00’ the numbers ‘2.50’ are changed to ‘\$3.00’ and the second time, the numbers ‘2.50’ are changed to ‘3.00’ and the words inserted ‘one year after’ in ink, who wrote that?

A. Dr. Lyman.

Q. And calling your attention to the fifth page in which is written in ink ‘the Pineapples particularly being very fine comparing favorably with the Hawaiian pineapples, the best grown,’ I will ask you who wrote that? A. Dr. Lyman.

Q. Calling your attention to the last page, with the written matter where the change in number is made from ‘2.50’ to ‘3.00,’ I will ask you who made that change? A. Doctor Lyman.

Q. Calling your attention to the same page where it reads ‘Timber lands do not require cultivation’ and the rest of it stricken out and inserted in ink there is ‘and there are no taxes on timber lands,’ I will ask you who wrote that? A. Doctor Lyman.

Q. Examine those checks. I will ask you whether or not those checks were received by the Segnogram Company for the printing which you have testified to?

(Testimony of T. P. Smith.)

Mr. SCHENCK.—Do you mean just testified about or what he testified to yesterday? [315]

Mr. REGAN.—It takes in all his testimony.

A. I received those checks in the office of the Panama Development Company, generally from Mr. Smith. I made my request for money to Dr. Lyman, and he would tell me to call and see Mr. Smith and get a check.

Mr. REGAN.—These checks are drawn by the Panama Development Company, signed John Redpath, vice-president, L. R. Smith, secretary, and total \$1608.90.

W. How much of a balance was left unpaid?

A. About 1800."

Cross-examination.

(By Mr. SCHENCK.)

Q. In other words, you stood a loss of about \$200 actual work expended which could not be delivered because the Government was in possession? Is that it?

A. That is the idea but I am not sure about the amount. About \$1000 of the \$1600 remaining was over thirty days old. I couldn't say off-hand what month it was that this last check for \$269.50 closed the account up to. My best recollection is that the check closed the account for June. I first met the defendant about the 20th day of April, 1911. No one else ordered any literature. I never saw Dr. Lyman composing any of it. Not a word except possibly one exception and that was on an Exhibit which I testified was in his handwriting.

Testimony of John Redpath, for Plaintiff (Recalled).

JOHN REDPATH, recalled for the United States, having been previously sworn, testified as follows:

I became acquainted with Lyman two years ago last May. I met him at the Alexandria in reply to an ad in one of the morning papers for a competent salesman. It was about the end of [316] April or the first of May, 1911. He handed me a book on Panama and asked me to read it over—Lindsay's book on Panama—and asked me to read it over and come to see him on the following day. I took the book and read it partially and returned to the hotel, not seeing him then. I left a line to say that I had left the book in Dr. Lyman's box at the Alexandria. I next heard from him when I got a telegram from him about three days afterwards, asking me to call at 433 Cons. Realty Bldg. I called on him there and had a conversation with him to the effect that he wished me to become sales manager or sell lands in Panama. He said he was going to sell Government lands for the Panamanian Government. He said that they were going to open up an office in Mercantile Place in the course of a few days and to come back in a few days to that office and meet him there. He did not say anything about the company at that time. I was then employed by him as salesman or sales manager to sell lands in Panama, and appoint salesmen. After I engaged the salesmen I was instructed to turn them over to Mr. Smith to get instructions as regards lands. I was to receive \$50.00

(Testimony of John Redpath.)

a week. I know Mr. Barry. I met him at 433 Cons. Realty Bldg. at the office of the defendant. I also met him over at the office of the Panama Development Company. When I went over to the Panama Development Company at Mercantile Place the first time, besides Mr. Lyman I also met Barry, Smith and Mr. Lynn.

Q. And what did Mr. Lyman tell you about your desk or where you would be situated?

A. I asked which desk I should take in the outer office or whether I should take the desk in the inner office and share it with him. This conversation took place, I should judge, about the first week in May, 1911.

Q. When did you first know that your name was used as an officer of the Panama Development Company? [317]

A. I saw my name as Vice-president in some of the literature and I can't remember in what folder it was *on* or what literature it was.

Q. About that time? A. Yes.

Q. Did you speak to Dr. Lyman about that?

A. I did. I asked why my name was there as vice-president. That conversation took place at the same time he showed me where my desk was.

Q. What did he tell you?

A. He said he was organizing a company and had taken the liberty of using my name as vice-president.

Q. What other conversation did you have?

A. I asked why his name didn't appear. He said he didn't wish his name to appear in the corporation

(Testimony of John Redpath.)

at that time on account of a divorce suit that was pending in New York, but that later he would become an official of the company. I was introduced to Mr. Smith by Mr. Lyman as secretary of the Company. He told me Mr. Smith was to manage the outer part of the Company looking after the correspondence and have general charge of the office.

Q. Was it at that time that he told you—or at that same conversation that he told you that after engaging the salesmen you should turn them over to Mr. Smith for instructions?

A. Yes. At that conversation he told me about his relations in Panama. He told me that as agent for the Panamanian Government for the sale of their lands, that he stood in very close with the Panamanian Government officials; that he was able to purchase land at a low rate—fifty cents or a dollar and sell it for \$5.00. At that time there was no map of Panama Lands in the office.

Q. What did Lyman tell you his connection with the company [318] would be?

A. He would take full charge of the company. That is what he told me. He told me he retained the office at 433 Cons. Realty Bldg., because he had other matters on hand that required him to do so at that time. There was very little done the first week that I was there except to see that the office was fixed up with a safe in there and so on. Dr. Lyman called at the office several times every lay. His talk was mostly with Mr. Smith and a little with myself. This map, Ex. 40, was brought into the office shortly

(Testimony of John Redpath.)

after my connection with the company. It was not colored at that time. I had a conversation with Dr. Lyman shortly after this map was brought in as to the location of lands in Panama. He indicated to me on the map where the lands were. The above conversation was had with Lyman perhaps a week or two weeks after I went in.

Q. Where did he indicate to you that the lands were situated?

A. Cocle, Veragua and Chiriqui. He said that the lands in Cocle were suitable for growing bananas and that we had better push the land in that province.

Q. Did he say anything to you about Agua Dulce?

A. Not immediately at that time, but very soon afterwards he said that down at Agua Dulce there was some fine government land there of which he intended to get a plat printed, which would be easier for the salesmen to sell from. He said the ground around Agua Dulce was adapted for bananas and cocoanuts. He talked more of sugar cane in Cocle. He said that we should concentrate our sales to that land and the vicinity of Agua Dulce on account of the sugar cane and the fact that the railroad was going through there and would reach there prior to getting out here.

Q. By here you mean out to David?

A. Yes, sir. He indicated that the timber lands were [319] situated at Veragua. He simply said that there was some very valuable hardwood timber in Veragua that we could sell as agent for the Pana-

(Testimony of John Redpath.)

manian Government. He said he owned 10,000 acres in Chiriqui near David. U. S. Exhibit 48 was the first piece of literature that I saw. I had a conversation with Dr. Lyman about that literature outside of the fact that my name appeared as an officer I asked about the place and about the capitalization and one or two other questions that I cannot recollect exactly, but I went into that part pretty thoroughly. This conversation took place I should judge about the 15th of May, somewheres around there. In the middle of May. I had a conversation with him about the capitalization. The only thing that was said about the capitalization at that time was when I asked him if the capitalization was subscribed, and he said yes.

Q. Did he tell you where to get your information—any further information—about the lands in Panama, outside of what he told you personally? Did he refer you to any other literature or anything of that sort?

A. Well, the literature would speak for itself he always said. I opened a bank account for the Company. It was some time in May. I judge it was a week or so after we started—after the office was opened. We opened two bank accounts. One in the Security Savings Bank and one with the National Bank of California in the name of the Panama Development Company. He told me that I should sign the checks and Mr. Smith should sign the checks with me and in the absence of Mr. Smith, Mr. Lynn. He gave me the money for that. He had an account in

(Testimony of John Redpath.)

the Security Bank just a few weeks. The account was closed at the request of the Security Savings Bank. We then opened an account with the Park Bank. I took the money from the Security Bank and deposited it in the Park Bank.

Q. And you never signed any other checks of the defendant [320] or of the company?

A. No, sir. Dr. Lyman and Mr. Smith "O.K'd." the accounts. I made out checks for their payment. Exhibit 40 when it first appeared in the office was white. I had nothing to do with the coloring of it later. I think Mr. Smith had charge of that. I talked to Dr. Lyman about Mr. Guardia early in May or in the middle of May. He said he was a very influential man. That his son was an officer of the Board and that the Guardias were about the leading family in Panama.

Q. What, if anything, did he say he would do with reference to getting land in Panama?

A. He said that he was the man who would look after the lands in Panama. Dr. Lyman told me that Mr. Smith would attend to all the correspondence in the office of the Panama Development Company. I signed letters myself. I had been instructed to sign letters by Mr. Lyman.

Q. Now did you ever sign any letters which were brought there from Mr. Lyman's office in the Coms. Realty Bldg.? A. Yes, sir.

Q. At his direction? A. Yes, sir.

The WITNESS.—I had a conversation about the middle of May with Dr. Lyman, in regard to the land agreement, U. S. Exhibit 46. He explained to

(Testimony of John Redpath.)

me how these were to be used. I was to sign these and seal them and this power of attorney and land agreement were to be sent to Panama and this was given to the purchaser. The other was to be forwarded to Panama. This power of attorney was to be forwarded to de la Guardia, to file with the Panamanian Government, and that is what I told purchasers.

Q. Did he tell you what was to be done with the money or if any was to be paid to the Panamanian Government?

A. After keeping the profit for the Panama Development [321] Company, the cost of the land—the government land—was to be paid to them. I spoke to him about sending money to the Panamanian Government with the applications. He said it was not necessary to send money at that time and that he would attend to that himself. He told me to tell customers that the applications would be filed immediately and that the conditional title would be issued by the government and when the full amount was paid, the full title would be issued by the government. Miss Hobb, Mrs. McDonald, Mr. Lynn, Dr. Lyman and Miss Clark used to bring correspondence from 433 over to the Panama Delevopment Company. Most of it was signed by Mr. Smith. Sometimes I signed some myself, if Mr. Smith wasn't there.

Q. Did you ever have any conversation with the defendant with reference to sending purchasers over to his office in the Consolidated Realty Build-

(Testimony of John Redpath.)

ing? A. Yes, sir.

Q. Fix that conversation as closely as you can.

A. Well, I have been asked to send over parties who wanted to find out more about Panama, and he being an owner himself and knowing it and not being identified personally,—I mean in the Company—he would be able to aid sales.

Q. Was anything said about suppressing the fact that he was interested in the Panama Development Company? A. Yes.

Q. (By Mr. REGAN.) What did he tell you about that?

A. He told me to send people over there and he would handle them.

Q. What did he tell you about telling that he was connected with the Panama Development Company?

A. He didn't wish it known that he was connected with the Panama Development Company.

Q. Did he say that or is that your construction?
[322]

A. No; he said so; that he didn't wish to be known as an official of the Panama Development Company. Lyman inquired every morning as to the bank balance. I had a conversation with the defendant about the sale of 10,000 acres to an American Colony down at Agua Dulce. He told me that an American colony had purchased 10,000 acres through the company. I never signed any contract for the purchase of 10,000 acres by an American colony, nor by anybody, nor did I ever see such a contract. He said that experts would be sent down there to look

(Testimony of John Redpath.)

after the different lands.

U. S. Exhibit 43 for Identification was here introduced in evidence and marked U. S. Exhibit 43.

The WITNESS.—U. S. Exhibit 43 was used in the office of the Panama Development Company for selling lands, showing people where we could locate them. They were shown the block in which their lands were located and how close they were to the ocean and river. Dr. Lyman told me the lands appearing on U. S. Exhibit 43 were the lands that we should sell.

Q. Now besides this making out of the checks and attending to the hiring of salesmen, etc., did you act in more or less of a capacity as a reference on the part of the other salesmen employed there?

A. Yes, sir, I did.

Q. Who else were employed there as salesmen?

A. Mr. Maynard, Mr. Byrd, Mr. Pentland and Mr. Lynn. Mr. Smith and Mr. Lynn were around there most of the time. Lyman conferred most with Mr. Smith when he came over to the office. I never attended a meeting of the Board of Directors of the Panama Development Company, nor did I ever hear of a meeting of that Board. The information that I gave purchasers I secured from Dr. Lyman and from the literature in the office there.

Q. Now refer back for a moment to your question of the [323] Security Savings Bank, I show you this letter dated "Los Angeles, May 27th, 1911," on Panama Development Company paper, signed "Panama Development Company, by John Red-

(Testimony of John Redpath.)

path," and ask you whether or not you signed that letter? A. Yes.

Q. At whose direction?

Mr. SCHENCK.—Objected to as irrelevant, immaterial, incompetent and not within the issues.

The COURT.—I think that is clearly competent.

Mr. SCHENCK.—I cannot see any connection between that and the indictment. I want to add to that objection that it is hearsay as to this defendant.

The COURT.—I will overrule the objection.

A. Dr. Lyman's. I got those figures from Dr. Lyman, and he asked me to dictate the letter to Miss Clark and I signed it at his request. I first saw the stock-book of the Panama Development Company about the middle of May. Mr. Smith brought the book in and Dr. Lyman called it to my attention. He asked me to make out a certificate for ten shares to de la Guardia and so on. Dr. Lyman gave me instructions to make out certificates, and I made out and signed certificate Number 1 for ten shares to Hernan de la Guardia, certificate Number 2 for ten shares to John Redpath, Certificate Number 3 for ten shares to L. R. Smith, Certificate Number 4 for ten shares to I. N. McDonald, Certificate Number 5 for ten shares to E. A. Lynn, Certificate Number 6 for 3,000 shares to Ferdinand Pottinger, Certificate Number 7 for 1,000 shares to John Redpath, and Certificate Number 8 for 1,000 shares to L. R. Smith. I never signed any other certificates of the Panama Development Company other than just testified to, nor did I ever sign or deliver any of those certificates

(Testimony of John Redpath.)

to the people to whom they were issued.” [324]

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 70.

Mr. SCHENCK.—We object to it as irrelevant, immaterial and incompetent.

The COURT.—The objection is overruled.

The said document was marked United States Exhibit 70, read in evidence and the same is as follows:

U. S. Exhibit No. 70—Letter, May 27, 1911, Panama Dev. Co. to Security Savings Bank.

(Letterhead of Panama Development Company.)

Los Angeles, May 27, 1911.

Security Savings Bank,

Fifth and Spring Streets,

Los Angeles, California.

Gentlemen:—

Herewith please find Statement of our Resources and Liabilities at the close of business, May 26th, 1911:

Resources. (Red)

Mortgages and Loans.....	\$ 5,000.00
Cash in Banks.....	8,310.00
Investments	30,000.00
Bills of Exchange and Cash Advanced	10,000.00
Furniture and Fixtures.....	1,163.00
	<hr/>
	\$54,473.00

(Testimony of John Redpath.)

Liabilities. (Red)

Capital Stock Issued.....\$50,000.00

Bills not yet due..... 4,473.00

\$54,473.00

Yours very truly,

PANAMA DEVELOPMENT CO.

By J. M. REDPATH,

Vice-President. [325]

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 70. Filed October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Q. (By Mr. REGAN.) Referring to the statement contained to the Security Savings Bank, U. S. Exhibit 70, "Mortgages and Loans," \$5,000.00 under the head of "Resources," did you have any conversation with Dr. Lyman at all?

A. Yes, sir. I asked him what the mortgages and loans were and he said that was a mortgage on some oil property in Basin, Wyo. I never saw the mortgage, I never knew anything more about it except what he told me with respect to the item of the \$30,000.00 investment, he said that was land owned by the Company in Chiriqui—30,000 acres of land. I never saw any deed to that. I never knew that they had it outside of the statement of the defendant. I never offered to sell this specific land in Chiriqui.

With relation to the item marked "Bills of Exchange and Cash Advanced" he said that was money

(Testimony of John Redpath.)

he had advanced to the Panama Office. I never had a conversation with him about the item "Capital Stock issued."

Representatives of both Bradstreet and Dun called to see me seeking information about the Panama Development Company. After they called I conferred with the defendant in reference to their visits to get information to furnish them, which I gave to them. The copy of a letter which you hand me I signed at the direction of Dr. Lyman. It was mailed in the ordinary course of business. (The letter just identified by the witness was marked U. S. Exhibit 72 for Identification.) The letter you show me dated May 27th, 1911, addressed to Messrs. R. G. Dun & Co., was signed by me at the direction of Dr. Lyman, and the statements contained therein were furnished by him. (The letter just identified was introduced in evidence, marked U. S. Exhibit 73 [326] and reads as follows:)

U. S. Exhibit No. 73—Letter, May 27, 1911, Panama Dev. Co. to R. G. Dun & Co.

(Letterhead of Panama Development Company.)

Los Angeles, May 27, 1911.

Messrs. R. G. Dun & Company,
916 International Bank Building,
Los Angeles, California.

Gentlemen:

Herewith please find statement of our Resources and Liabilities at the close of business, May 26th, 1911:

(Testimony of John Redpath.)

(Red) RESOURCES.

Mortgage and Loans.....	\$ 5,000.00
Cash in Banks.....	8,310.00
Investments	30,000.00
Bills of Exchange and Cash Ad- vanced	10,000.00
Furniture and Fixtures.....	1,163.00
	<hr/>
	\$54,473.00

(Red) LIABILITIES.

Capital Stock Issued.....	\$50,000.00
Bills not yet due.....	4,473.00
	<hr/>
	\$54,473.00

Yours very truly,

PANAMA DEVELOPMENT CO.

By J. M. REDPATH,

Vice-President.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 73. Filed October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The WITNESS.—At the time I went to Dr. Lyman to get information for Dun's and Bradstreet's representatives he told me to tell them that we were acting as agents for the Panamanian [327] Government for the sale of lands belonging to the Government and that is what I told them.

Q. (By Mr. REGAN.) Now I show you what purports to be the minute-book of the Panama Development Company and ask you whether or not you

(Testimony of John Redpath.)

ever saw that book before?

A. Yes, sir, I have seen this book before. Dr. Lyman showed it to me some time in August or July of 1911. The minutes were brought in for me to sign. Dr. Lyman told me to sign them; they were the minutes of May 16, August 8th, August 15th, August 16th and August 21st, 1911. The signatures to the minutes which I have just identified are Mr. Lyman's signatures and mine. I signed the minutes, at the direction of the defendant and handed them back to him. That is the only time I signed any minutes of the meeting of the company, and never at any time did I attend a meeting of the stockholders or directors of the company.

Mr. REGAN.—I now offer in evidence the minutes just identified by the witness and ask that they be marked United States Exhibit 74.

(Mr. Regan thereupon reads the minutes identified by the witness from the minute-book and the said minutes are marked "United States Exhibit 74" and are as follows):

U. S. Exhibit No. 74—Minutes of Meeting of Board of Directors of Panama Dev. Co., May 16, 1911.

Los Angeles, May 16, 1911.

Meeting of the Board of Directors named in the Articles of Incorporation of the Panama Development Company, April 29th, 1911, which held its first meeting in the City of Los Angeles, in the State of California, Eleven o'clock A. M. on the 16th day of May, 1911.

Present, Mess. E. A. Lynn and W. H. Berry, being majority of the said Board. Notice of the meeting having been read, waiver signed by M. La Rue, was presented and filed.

On motion of E. A. Lynn, seconded by W. H. Barry, the following resolution was duly adopted:
[328]

RESOLVED, That I. T. Stoddard and Celora Martin Stoddard, both of Phoenix, are hereby appointed agents of this Company for the acceptance of service of legal process in Arizona, and that notice of such appointment be filed in conformity with the laws of said Territory, the said agents to receive a total annual compensation of ten dollars, payment of which is hereby authorized and directed.

On motion duly made and seconded, Hernan de la Guardia was elected director of the Panama Development Company, in place of M. La Rue, resigned.

On motion duly made and seconded, I. M. McDonald was elected Director of said Company.

On motion duly made and seconded, John Redpath was elected Director of said Company to take the place of W. H. Barry, resigned.

On motion duly made and seconded, the Park Bank of Los Angeles, was appointed depository of the funds of said Company, and John Redpath authorized to open an account with same, and check on same, checks to be countersigned by F. A. Lynn.

On motion duly made and seconded, L. R. Smith was elected Director, of said Company.

On motion duly made and seconded, the National Bank of California, was also appointed depository

of the funds of said Company, and John Redpath, authorized to open an account with same, and check on same, checks to be countersigned by L. R. Smith.

On motion duly made and seconded, Hernan de la Guardia was authorized to open a bank account in Panama, in the name of the Company, check from same, and enter into contracts in its behalf, not to incur an indebtedness, however, to exceed \$5,000 (Five Thousand Dollars) Gold, and to do all things that may be necessary to transact the Company's business.

On motion duly made and seconded, Sr. Hernan de la Guardia, [329] Sr. Santiago de la Guardia and Sr. C. Quelquejeu were appointed an advisory board to pass on the plans of the Company, and aid in securing advantageous contracts in the Republic of Panama.

On motion duly made and seconded, the following Resolution was duly and unanimously adopted:

WHEREAS, the Panama Development Company, a Corporation, is desirous of acquiring 50,000 acres of agricultural and timber lands, in the Republic of Panama, Now therefore, be it

RESOLVED, that said Corporation purchase from John Grant Lyman, 50,000 acres of such agricultural and timber lands at the agreed price of \$2.50 per acre, such lands to be conveyed to the said Corporation in such quantities, and within the aforesaid quantity of 50,000 acres, as the said Corporation may desire, and as the said President and Secretary of such Corporation may demand of the said Lyman for delivery; which lands as to quality and availability for the purposes of this corporation shall

be satisfactory to the said President and Secretary or Vice-President and Secretary of said Corporation. The said 50,000 acres purchased hereby from the said Lyman to be received and paid for within one year from June 1st, 1911, and the said purchase price of \$2.50 per acre for all lands to be conveyed as aforesaid to said Corporation by said Lyman to be paid for to said Lyman as follows: \$1.25 per acre at the time of purchase of said lands and \$1.25 within four years from date of said first payment of \$1.25; and the President and Secretary of this Corporation are hereby authorized to carry out this resolution under such further conditions as may be necessary and proper to effect the purposes of this resolution and to execute such agreements relating thereto, as may be necessary,—as to legally carry out this resolution.

On motion duly made and seconded, the following resolution was adopted: [330].

RESOLVED: that the Panama Development Company, a Corporation, dispose of 10,000 shares of its capital stock or any part thereof in the open market to anyone willing to purchase the same at \$10. per share and the President and Secretary of said Corporation are authorized to carry this resolution into effect, and to make, execute and deliver certificates of stock to purchasers for stock that *the* may buy under this resolution.

Adopted.

By JOHN REDPATH,
Vice-President.

By E. A. LYNN,
Asst. Secretary.

**Minutes of Meeting of Board of Directors of Panama
Dev. Co., August 11, 1911.**

Los Angeles, Aug. 8, 1911.

Special meeting of stockholders of the Panama Development Company, held at the office of the Company in Los Angeles, California, on the eighth day of August, 1911, after due notice of the time, place and purpose of the meeting, by the affirmative vote of a majority of the issued and outstanding stock of the company, Article #3 of the Articles of Incorporation of the said Panama Development Company was duly amended to read as follows:

ARTICLE #3.

The amount of the authorized Capital Stock of the corporation is \$100,000., divided into 10,000 shares of the par value of \$10.00 each, which shall be paid in, at such time as the Board of Directors may designate, in cash, real or personal property, services, lease, option to purchase, or any other valuable right or thing, for the uses and purposes of the corporation, and all shares of Capital Stock, when issued in exchange therefor, shall thereupon and thereby become and be full-paid the same as though paid for in cash at par, and shall be non-assessable forever, and the judgment of the Directors as to the value of any property, right or thing acquired in exchange for Capital Stock shall be [331] conclusive.

IN WITNESS WHEREOF, the Vice-President of said Company has hereunto set his hand, attested

by the Secretary of the Corporation, this 9th day of August, 1911.

J. M. REDPATH,
Vice-President.

E. A. LYNN,
Asst. Secretary.

**Minutes of Meeting of Board of Directors of Panama
Dev. Co., August 8, 1911.**

Los Angeles, California, August 8th, 1911.

Meeting of the Board of Directors of the Panama Development Company, held at the offices of the Company, 216 Mercantile Place, Los Angeles, California, at twelve o'clock noon, on the 8th day of August, 1911.

On motion duly made and seconded by vote of all Directors Present, the following resolution was unanimously adopted:

RESOLVED: That the Panama Development Company a Corporation, do sell to John Grant Lyman for the sum of Ten Dollars and for past services by him rendered for said Corporation, the following described land.

‘All that Real Property situate in Riverside, County of Riverside, State of California, described as follows: All of that portion of Blocks Seven (7) and Eight (8) and of Lots One (1) and Two (2) in Block Six (6) of D. C. TWOGOOD’S Orange Grove Tract as shown upon a map of said Tract of record in the office of the County Recorder of the County of San Bernardino in Book Seven (7) of *Map* at Page 42 thereof, that is bounded and described as follows, to wit:

Commencing for a place of beginning at a point where the southerly line or Prospect Street (sometimes called Prospect Avenue) intersects the easterly line of Olivewood Avenue; running [332] thence easterly on and along the south line of Prospect Street 326 feet, to a point distant 106.20 feet easterly from the point where the easterly line of Mulberry Street produced, would intersect the said southerly line of said Prospect Street; running thence southerly, at right angles to said southerly line of said Prospect Street, 219.3 feet, to the lands heretofore sold and conveyed to J. C. CHAMBERS: running thence at a right angle westerly 237.4 feet more or less to the easterly line of said Olivewood Avenue; and running thence northerly, along the easterly line of said Olivewood Avenue, 236.5 feet, more or less, to the place of beginning; and being the same property described in Deed from ADALINE TWOGOOD and D. C. TWOGOOD, her husband, to FRANCES B. HALDEMAN, recorded in Book 163 of Deeds at page 135 thereof, in the office of the County Recorder of Riverside County, subject to a Mortgage made September 7th, 1909, to HUGH A. BAIN for Seven Thousand (\$7,000.00) Dollars at seven per cent (7%) interest, and due three (3) years after date, recorded September 22nd, 1909, Book 85, Page 141.'

And the President and Secretary of said Corporation are hereby authorized to execute and deliver on behalf of said Corporation, a deed and conveyance for said land to said John Grant Lyman in the usual form in use in California, sufficient to convey

title to said Land on receipt of the said sum of ten dollars.

ADOPTED:

JOHN REDPATH,
Vice-President.
E. A. LYNN,
Asst. Secretary.

Los Angeles, August 15, 1911.

Meeting of the Board of Directors of the Panama Development Company, held at the offices of the Company, 216 Mercantile Place, [333] Los Angeles, California, at twelve o'clock Noon, on the 15th day of August, 1911.

Present, Mess. E. A. Lynn, I. N. McDonald, John Redpath, and L. R. Smith.

On motion duly made and seconded, by vote of all Directors present, the following resolution was unanimously adopted:

RESOLVED, That the Panama Development Company a Corporation, do mortgage for the sum of \$1100.00, the following property:

To wit: Lot 285, Edendale Track, Los Angeles County.

And the President and Secretary of the said Corporation are hereby authorized to execute and deliver on behalf of said Corporation, a mortgage covering said land in the usual form in use in California, on receipt of the said sum of \$1100.00.

Given under our hand and seal this fifteenth day

of August, nineteen hundred and eleven.

ADOPTED:

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH,

Vice-President.

By F. A. LYNN,

Asst. Secretary.

**Minutes of Meeting of Board of Directors of Panama
Dev. Co., August 16, 1911.**

Los Angeles, August 16th, 1911.

Meeting of the Board of Directors of the Panama Development Company, held at the offices of the Company, 216 Mercantile Place, Los Angeles, California, at twelve o'clock Noon, on the 16th day of August, 1911.

On motion, and by vote of all directors present, the following resolution was unanimously adopted:

WHEREAS, The Panama Development Company, a Corporation, has received and had advanced to it by John Grant Lyman from time to time various sums of money aggregating in all the sum of \$23,000. [334] and all of said money has been received by said Corporation and has by its Officers and Directors been expended for the benefit and for the business purposes of said corporation, and the said sum of \$23,000. is now due and owing to the said John Grant Lyman from said Corporation, now be it therefore:

RESOLVED, That said corporation do make, execute and deliver its on demand promissory note to said John Grant Lyman for the said sum of \$23,000, with interest thereon at the rate of 7% per annum,

which said note shall be in words and figures following:

Los Angeles, California,

\$23,000.

August 16,, 1911.

On demand we promise to pay to the order of John Grant Lyman twenty-three thousand ——— Dollars at 216 Mercantile Place, Los Angeles, California, Value received with interest at 7%.

No. 1 Due.

PANAMA DEVELOPMENT COMPANY.

JOHN REDPATH,

Vice-President.

E. A. LYNN,

Asst. Secretary.

And the President and Secretary of said Corporation are hereby authorized and directed on behalf of said Corporation, to make, execute and deliver said promissory note to said John Grant Lyman.

ADOPTED:

E. A. LYNN,

Asst. Secretary.

Minutes of Meeting of Board of Directors of Panama Dev. Co., August 21, 1911.

Los Angeles, California, August 21, 1911.

Meeting of the Board of Directors of the Panama Development Company, held at the offices of the Company, 216 Mercantile [335] Place, Los Angeles, California, at twelve o'clock noon, on the 21st day of August, 1911.

Present, Mess. E. A. Lynn, I. M. McDonald, John Redpath and L. R. Smith.

On motion duly made and seconded, by vote of

all Directors present, the following resolution was unanimously adopted:

Resolved: That L. R. Smith, Director and Secretary of the Company, is hereby authorized to open a bank account in the name of the Company, enter into contracts on its behalf and to incur indebtedness not, however, exceeding Twenty-five thousand dollars (\$25,000) Gold, and to do all things that may be necessary to successfully transact the Company's business in Panama.

Given under the Company's seal this 21st day of August, Nineteen hundred and eleven.

ADOPTED:

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH,

Vice-President.

(Letterhead of Panama Development Company.)

Los Angeles, Aug. 21, 1911.

Meeting of the Board of Directors of the Panama Development Company, held at the offices of the Company, 216 Mercantile Place, Los Angeles, California, at twelve o'clock noon, on the 21st day of August, 1911.

Present, Messrs. E. A. Lynn, I. M. McDonald, John Redpath and L. R. Smith.

On motion duly made and seconded, by vote of all Directors present, the following resolution was unanimously adopted:

RESOLVED: That L. R. Smith, Director and Secretary of the Company is hereby authorized to open a bank account in the name of the Company, enter into contracts on its behalf and to incur in-

(Testimony of John Redpath.)

debtedness not, however, exceeding Twenty-five Thousand Dollars [336] (\$25,000) Gold, and to do all things that may be necessary to successfully transact the Company's business in Panama.

Given under the Company's seal this 21st day of August, nineteen hundred and eleven.

ADOPTED:

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH,

Vice-President.

(Seal of Panama Development Company:)

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 74. Filed October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I now show you what purports to be a note for \$23,000 dated August 16, 1911, signed Panama Development Company, John Redpath, Vice-president, L. R. Smith, Secretary.

A. That is my signature and that is Mr. Smith's signature. I signed that note at Dr. Lyman's direction and delivered it back to him.

Mr. REGAN.—We offer the same in evidence and ask that it be marked United States Exhibit 75.

(Said note so offered in evidence is marked United States Exhibit 75, read in evidence and is as follows:)

(Testimony of John Redpath.)

**U. S. Exhibit No. 75—Note, August 16, 1911, of
Panama Dev. Co.**

(Letterhead of Panama Development Company.)
\$23,000.00.

Los Angeles, Aug. 16, 1911.

On demand we promise to pay to the order of
JOHN GRANT LYMAN, Twenty Three Thousand
Dollars, at 216 Mercantile Place, Los Angeles, Cali-
fornia, value received with interest at 7%.

No. 1. Due.

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH,

Vice-President.

By L. R. SMITH,

Secretary. [337]

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S.
Exhibit 75. Filed October 23, 1913. Wm. M. Van
Dyke, Clerk. By C. E. Scott, ———.

A JUROR.—Was there any consideration given
for that note?

A. No, sir.

Q. (By a JUROR.) I thought in the other evi-
dence a while ago it was for moneys advanced that
this note was given to Mr. So and So?

A. Yes, sir.

Q. Then there was a consideration?

A. That was a statement that Doctor Lyman
made: That that was the cost of his promotion of
the company and the amount he had expended in

(Testimony of John Redpath.)

making the arrangements with the government of Panama.

The WITNESS.—The letter dated June 3, 1911, which you show me, was signed by me at the direction of Dr. Lyman. I did not dictate the letter. Prior to the writing of this letter the Panama Development Company had made application to the Los Angeles Stock Exchange. (The letter so identified was introduced and read in evidence, marked U. S. Exhibit 76, and reads as follows:)

**U. S. Exhibit No. 76—Letter, June 3, 1911, Panama
Dev. Co. to Los Angeles Stock Exchange.**

(Letterhead of Panama Development Company.)

Los Angeles, June 3rd, 1911.

Manager,

Los Angeles Stock Exchange,

Los Angeles, California.

Dear Sir:

Referring to your favor of the 2nd inst. would say the nature of our business is acting as Agents for the sale of Panama Government lands, and the developing of same on behalf of prospective settlers.
[338]

Later on we expect to be interested in the promotion of several companies, which will engage in raising sugar cane; also a Company to handle tropical products, on the lines of the United Fruit Company, for which there is a wide and lucrative field in Panama.

The enclosed literature is all we have issued thus far, and explains very fully what we are doing.

As to the men connected with the Company; Hernan de la Guardia is generally recognized as the leading agricultural expert in Panama, having been sent by his Government to the United States to make a special study of agricultural conditions here, with particular reference to products that could be successfully raised in Panama.

Santiago de la Guardia is the present Attorney General of Panama, and previous to this was the Secretary of State. He is one of the best known men of the Republic, and the Guardia family is recognized as one of the leading families in Panama, having been identified with the best in that country for years past.

Sr. C. Quelquejeu is head of the firm of C. Quelquejeu & Company, merchants in the City of Panama, and one of the oldest established firms there. Mr. Quelquejeu is undoubtedly the most widely known business man of the Republic.

It is these three gentlemen that practically constitute the directing board of the Company, and all operations are carried on under their advice.

Mr. John Redpath, Vice-president, was formerly connected with the British Bank of North America, and as personal reference refers you to W. H. Andrews, Cashier of the German American Savings Bank.

I. N. McDonald, Treasurer, was until recently engaged in the private work of Senator Wm. A. Clark, who has an office at [339] #20 Exchange Place, New York City. Mrs. McDonald is a lady who rep-

resents a gentleman with a large financial interest in this Company.

L. R. Smith, Secretary, was formerly Manager of the Sonora Mercantile Company, Sonora, Mexico, and as personal reference refers to Mr. Fred Gale of Purcell, Gray and Gale, and as banker's reference, Mr. W. W. Lawton, Cashier of the First National Bank of Douglas, Arizona.

E. A. Lynn, Assistant Secretary, is the son of Dr. T. M. Lynn, of this city, and for personal reference refers to H. M. Hurd, State Senator, and R. G. Simons, President of the Standard Book Company.

Regarding the copy of the balance sheet supplied you, will take up the items in detail—the one of Mortgage and Loans of \$5,000, refers to a loan of \$5,000 to the Basin-Wyoming Oil Company, in which one of the Directors of this Company is interested.

To secure the payment of this loan, a mortgage was given covering 320 acres of oil-bearing lands in the Basin of Wyoming, the land, alone, being conservatively estimated as worth \$100.00 an acre. With this loan was given an option for one year on 50,000 fully paid shares of \$1.00 each, at ten cents per share.

The second item speaks for itself.

The third item, under Investments, refers to a \$15,000 advance to the PANAMA SUGAR ESTATES LIMITED, which Company has an authorized capital of £500,000, divided into shares of \$5.00 or £1 each, which Company was organized to take over and develop 50,000 acres of land near Agua

Dulce, Province of Cocle, Panama, and plant the same to sugar cane.

This company has received 30,000 fully paid £1 shares in return for this advance of \$15,000, and the company is now selling its shares in England at four shillings each. A special [340] settlement in these shares will be obtained on the London Stock Exchange. Later it is our intention to make a public offering of a portion of this Company's treasury stock here, and if the results are satisfactory, application will be made in due course to list the same on the Los Angeles Stock Exchange.

This Company has also made an investment of a like amount in the TROPICAL PRODUCTS COMPANY LIMITED, on the same terms. This latter concern is to devote a large acreage to bananas and cocoanuts, and there is every reason to believe both Companies will prove marked successes, as they are in the hands of thoroughly capable men, who have made a success in similar lines.

Regarding the next item, Bills of Exchange and Cash Advanced, that refers to advances made our agents in Panama, and later will be represented by purchases of land and property now in the way of consummation.

So far as the present operations of the Company are concerned, we do not require a great amount of capital, as from all the Government lands we sell we derive a profit of \$2.50 per acre, or 100%, (this is confidential,) and all our sales are practically on a cash basis.

(Testimony of John Redpath.)

Believing this covers all the points raised in your letter, we are,

Yours faithfully,

PANAMA DEVELOPMENT COMPANY,

By JOHN REDPATH.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 76 Filed October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

The WITNESS.—I am acquainted with the signature of Mr. Smith, and have seen him write.

Mr. REGAN.—I show you United States Exhibit 4 for identification and ask you whether or not the signature there of the [341] Panama Development Company by L. R. Smith—whether that signature of L. R. Smith in your opinion is the signature of L. R. Smith?

A. Yes, sir, in my opinion that is Mr. Smith's signature.

Mr. REGAN.—I offer in evidence United States Exhibit 4 and asked that it be marked United States Exhibit 4.

**U. S. Exhibit No. 4—Letter, May 26, 1911, Panama
Dev. Co. to Stoddard Incorporating Trust Co.**

(Letterhead of Panama Development Company.)

Los Angeles, May 26th, 1911.

Stoddard Incorporating Trust Company,

Phoenix,

Arizona.

Gentlemen:

We should like to have you incorporate a company
entitled—

PANAMA SUGAR ESTATES LIMITED
with an

Authorized Capital of \$2,500,000 (£500,000)

divided into 500,000 shares, of the par

value of \$5.00, or (£1) each.

DIRECTORS

John Redpath

L. R. Smith

I. N. McDonald

which Company is to develop lands in Panama suitable for the cultivation of tropical products, and provide in the Charter it can act as planter, and engage in all forms of agriculture, as well as the building of a sugar mill making the Charter as liberal as possible.

Likewise incorporate a company entitled—
**TROPICAL PRODUCTS COMPANY
LIMITED**

with an [342]

Authorized Capital of \$2,500,000 (£500,000)
divided into 500,000 shares, of the par
value of \$5.00, or (£1) each.

DIRECTORS

John Redpath

L. R. Smith

I. N. McDonald

also to engage in planting of tropical products.

Stoddard Incorporating Trust Company—#2.

Provide that the annual meting of each Company
will be the first Tuesday in May of each year.

Enclosed please find check for \$100.00, covering
your fees. We think, in view of the fact that we
shall give you a very considerable amount of work,
that you should supply us without extra charge, with
additional certified copies of the Articles of Incorporation, as we require three of each.

Very truly yours,

(Signed) **PANAMA DEVELOPMENT COM-
PANY,**

By **L. R. SMITH.**

P. S.—Please note that we want the word “Lim-
ited” to appear in the title of both Companies with
the capital expressed in dollars and pounds, Sterling,
and for the purposes of exchange, £1 shall be con-
sidered equal to \$5.00.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S.
Exhibit 4 for Identification. U. S. Exhibit 4. Filed

(Testimony of John Redpath.)

October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I now offer in evidence United States Exhibit 7 for Identification and ask that it be marked United States Exhibit 7.

U. S. Exhibit No. 4—Letter, August 9, 1911, Panama Dev. Co. to Stoddard Incorporating Co.

(Letterhead of Panama Development Company)

Los Angeles, August 9, 1911. [343]

Stoddard Incorporation Co.,

Phoenix, Arizona.

Gentlemen:

We are handing you herewith an Amendment to our Articles of *Corporation* which explain themselves. We believe the document to be in proper form,—all of the stockholders being present at the special meeting mentioned.

We are enclosing check for \$35.00, and would ask that you use all haste possible in getting the matter disposed of for us. We are more than anxious to have the return of these papers as they are wanted for registration in Panama, and the writer is waiting their return to leave for that point, and for this reason, we are very anxious to have the matter rushed.

Thanking you in advance for your efforts in disposing of the matter in all possible haste, we beg to be

Yours very truly,

PANAMA DEVELOPMENT COMPANY

By L. R. SMITH.

S/C.

Enc.

(Testimony of John Redpath.)

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit 7 for Identification. U. S. Exhibit 7. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Mr. REGAN.—I now show you United States Exhibit 51 for identification and call your attention to the circular there which bears your name. Did you see that in the office of the Panama Development Company?

A. Yes, sir. I had very little conversation with Dr. Lyman about the Sugar Estates Company Limited, the conversation I should judge occurred somewhere about the middle of July. He simply said he was organizing a subsidiary corporation to the Panama Development Company for the purpose of planting sugar [344] cane. I also saw my name as Vice-president of the Tropical Products Company. I never attended a meeting of that Company.

Q. Did you ever sign a check as an officer of that company?

Mr. SCHENCK.—Objected to as immaterial and not within the issues of this case.

The COURT.—The objection is overruled.

A. I never signed a check as an officer of the Sugar Estates Co. or of the Tropical Products Company. Neither did I make a deposit for either Company or open accounts for either. I never transacted any business in any capacity that I can recollect for the Panama Sugar Estate Company, or the Tropical Products Co.

Mr. REGAN.—I now offer in evidence United States Exhibit 51 for identification and ask that it

(Testimony of John Redpath.)

be marked United States Exhibit 51.

Mr. SCHENCK.—We object on the ground that it is incompetent, irrelevant and immaterial and not within the issues of this action.

The COURT.—The objection is overruled.

(Mr. Regan thereupon reads United States Exhibit 51.)

(The said Exhibit so read is as follows:)

U. S. Exhibit No. 51—Circular of Panama Dev. Co.

PANAMA SUGAR ESTATES LIMITED.

Authorized Capital \$2,500,000 (£500,000).

Divided into 500,000 shares of the
par value of \$5.00 (or £1) each.

Full paid and Non-assessable.

Officers and Directors.

Hernan de la Guardia, President.

C. Quelquejeu, Vice-President,

John Redpath, Second Vice-President. [345]

L. R. Smith, Treasurer.

Victor Maura, General Manager.

C. J. Wood, Assistant Manager.

I. N. McDonald, Secretary.

This Company has been formed to acquire and develop 50,000 acres of government lands in Panama, suitable for the cultivation of tropical products, and it is proposed to at once put in 20,000 acres of sugar cane, which when planted on a large scale, will yield a profit approximate of \$75.00 an acre, or \$1,500.00 per annum.

It is the intention to gradually increase the acre-

age devoted to sugar cane until 50,000 acres are so planted, which should yield a profit, based upon the present cost of land and labor, of \$3,750,000 per annum.

It is the belief of the directors that no place on earth presents such a combination of favorable conditions for tropical agriculture as exist to-day in Panama, for, with the opening of the canal, all the markets of the world will be within easy reach.

How profitable tropical agriculture really is, can best be shown by the history of the United Fruit Company, which now has over 60,000 acres under cultivation, with one plantation alone, at Banés, Cuba, with 24,000 acres in sugar cane, which is yielding a profit of more than \$1,100, annually, under conditions far less favorable than those existing with this Company.

The United Fruit Company's total operations showed last year an annual net profit exceeding \$4,500,000. This company was started twenty years ago, and it is stated that the original investors who put in \$1,000 each, have withdrawn over \$1,000,000 in dividends. There is no mine, oil well, or industrial proposition in the whole civilized world that can show a greater percentage of profit than is presented in the history of this Fruit Company. [346]

That this is not an isolated case, except in the magnitude of its profits, is shown by the record of the Chaparra Sugar Estates of Cuba, of which Congressman Hawley of Texas, is at the head. This Company now has over 40,000 acres in cane, and is owned by the Cuban American Sugar Company, capitalized at \$18,000,000 on which it is paying a

dividend of 7 per cent, or \$1,260,000 annually, besides setting aside a large surplus from which improvements and extensions are being made.

It must be borne in mind that conditions for growing cane are not nearly so favorable in Cuba as in Panama, and that the production per acre is just about one half, being twenty-three tons in Cuba to forty tons in Panama. It has only been a total lack of transit facilities, with a lack of initiative on the part of the Panamanians, which has prevented Panama from being in the very fore-front of sugar producing countries.

Now that the Panama Government has permitted Americans to acquire lands on the same terms as granted natives, the completion of the canal will bring this district into close touch with the sugar markets of the world, and it is destined to become one of the most profitable industries.

It is not too much to say that no company is better qualified to secure desirable lands, or to obtain better results than the Panama Sugar Estates.

The President, Hernan de la Guardia, is one of the best posted scientific agriculturists in Panama, having been sent by his Government to study agricultural conditions in the United States, where he took special courses in two agricultural colleges. He is the son of the present Attorney General of Panama.

Mr. C. Quelquejeu is head of the firm of C. Quelquejeu & Company, one of the oldest and most widely known mercantile firms in the Republic of Panama. He was born in the Province of Chiriqui,

and is thoroughly familiar with business conditions prevailing [347] in the country in which he has achieved an enviable success.

John Redpath, a director, was formerly connected with the Royal Bank of Scotland, and later with the Bank of British North America. He is now Vice-president of the Panama Development Company.

Victor Maura is a sugar expert from Cuba, who is familiar with every detail of its cultivation and extraction.

Mr. Wood was until recently manager of the State Agricultural Station at Yuma, Arizona, and is an expert agriculturist, having resigned his former position to become identified with this company.

L. R. Smith, a director, is Secretary and General Manager of the Panama Development Company.

It will thus be seen that not only is the Board of Directors composed of men of sound business training, but they are particularly adapted to bringing the business of this company to a successful issue. It is a fair assumption, considering the unusually favorable conditions under which this company will act, that it will eventually achieve a success comparable only to that of the United Fruit Company.

One hundred thousand shares, of the par value of \$5.00 each, are now offered for subscription at \$1.00 per share. It is the confident belief of the directors that before the end of the current year these shares will sell for \$5.00 each.

The first crop of sugar cane will be harvested fifteen months after being planted, and when the com-

pany is in full operation, a handsome dividend, greater than the amount now asked for the shares, should be returned each year, and, based upon the profits now being made by similar companies, 100 per cent per annum on present cost is ultimately not too much to expect.

As a simultaneous offer of these shares is now being made [348] in London, no guarantee can be given that the full number applied for can be allotted, but should no allotment be made, the amount paid will be returned in full, or should any less number than those applied for be allotted, then the proportionate amount of the deposit will be returned.

Application will be made in due course for a special settlement on the London Stock Exchange; likewise for a quotation on the Los Angeles Stock Exchange.

PANAMA SUGAR ESTATES LIMITED.

To the Directors of the Panama Sugar Estates Limited,

216 Mercantile Place,

Los Angeles, California,

Gentlemen:

Enclosed please find check for \$—— covering my subscription at \$1.00 per share for —— fully paid shares, of the par value of \$5.00, or £1 each, of the Panama Sugar Estates Limited.

You are hereby authorized to register me on the books of the Company as a share holder of same.

Name _____

Address _____

(Testimony of John Redpath.)

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit 51 for identification. U. S. Exhibit 51. Filed October 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

Q. Did you, as an officer of the Panama Development Company ever know or hear anything about an advance of \$15,000 to the Panama Sugar Estates Company Ltd.?

A. No, sir. I never heard or saw \$30,000 worth of stock of the Sugar Estate Co., which was held as security by the Panama Development Company. I never saw any stock of the Tropical Products Co., I never heard of the Panama Development Company [349] making an investment in the Tropical Products Company. I never signed any stock of the Tropical Products Company as an officer. As far as I know I never did a single act as an officer of the Panama Sugar Estates Company, Ltd. I have no recollection of doing anything with regard to the Tropical Products Company. I remember a man by the name of Amiel in the office of the Panama Development Company. He bought some land from Mr. Byrd. I can't remember how much he bought. He paid cash gold to Mr. Byrd. Mr. Byrd delivered the money to me. I couldn't say how much it was. It was about \$1,000 or something like that. I was present at a conversation that Mr. Lyman had with Amiel. It was in the office of the Panama Development Company, I presume sometime in August and Amiel wanted a position and talked to Dr. Lyman about a position in Panama and Mr.

(Testimony of John Redpath.)

Lyman promised him one with the company. That is all I know about that transaction. I know that Amiel went to Panama after paying his money. I remember a man named Leach who came into the office of the company to buy some land. I partially transacted the business with him. I had a conversation with Mr. Leach with reference to his purchasing some land in Panama and the information which I gave him was information which I had heretofore received as I have testified. After my conversation with Mr. Leach I discussed the matter with Dr. Lyman. This was prior to the date of the contract, which contract was dated August 10th. I told Dr. Lyman that Leach had a house at Edendale which he valued at \$2,500, which was clear and that he would trade for Panama lands. Dr. Lyman told me to go out and look at the house and put a valuation on it, which I did. I reported to Dr. Lyman and told him that in my judgment the house was worth \$2500. Lyman then said to make a trade for it. He said to give him 1000 acres for it. The value of the property was \$2500 and that was to be the first payment on 1000 acres in Agua Dulce. Lyman indicated where to [350] locate Leach's land. It was block 49, the one marked "Sold." After I received that communication from Lyman a deed was executed by Mrs. Leach and delivered to me as vice-president of the Panama Development Company. At that time there was executed a land agreement between the company and Mrs. Leach.

Mr. REGAN.—I now offer the deed in evidence

(Testimony of John Redpath.)

and ask that it be marked United States Exhibit 77.

(Said document so offered in evidence is marked United States Exhibit 77 and is as follows:)

U. S. Exhibit No. 77—Deed, August 10, 1911, Elizabeth Leach to Panama Dev. Co.

“GRANT DEED

(Code Deed)

C. C. Sec. 1092

Elizabeth Leach, widow —— of Los Angeles, of the county of Los Angeles, State of California, **FOR AND IN CONSIDERATION OF THE SUM OF Two Thousand Five Hundred (2500) Dollars**, the receipt whereof is hereby acknowledged, does hereby Grant to the Panama Development Company **ALL THAT REAL PROPERTY SITUATE IN** Los Angeles, County of Los Angeles, State of California, described as follows: Lot 285, Edendale Tract, as per Book 2, page 81-82 of Maps, Records of Los Angeles, County.

WITNESS My hand this Tenth day of August, nineteen hundred and eleven.

ELIZABETH LEACH. (Seal)

_____. (Seal)

_____. (Seal)

Signed and delivered in the presence of

State of California,
County of Los Angeles,—ss.

On this 10th day of August, in the year nineteen

hundred and eleven, before me R. J. McClelland, a notary public in and for said county, residing therein, duly commissioned and sworn, [351] personally appeared Elizabeth Leach known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

WITNESS my hand and official seal.

[Seal]:

R. J. McCLELLAND,

Notary Public in and for said County of Los Angeles,
State of California.

(Title.)

No. —.

GRANT DEED.

(Code Deed.)

to

_____.

Dated ———, 191—.

Order No. 157.

When Recorded, please mail this instrument to

_____.

(Rubber stamp.)

Compared.

Document — Miller.

Book — ~~Cole~~ Wise.

Recorded at request of Grantee August 10, 1911,
at 16 min. past 1 P. M. in Book 4648, Page 210, of

(Testimony of John Redpath.)

Deeds Los Angeles County Records.

C. L. LOGAN,

County Recorder.

By R. L. Hazen, Deputy.

Fee \$ 80

—
4

7

346

[Endorsed]: 672. U. S. v. Lyman. U. S. No. Exhibit 77. Filed October 28, 1913. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Deputy Clerk." [352]

Q. Now, at that time was there executed a land agreement between the Company and Mrs. Leach?

A. Yes; there was.

Q. I show you this land agreement and ask you whether or not those were the papers that were executed at the time the deed was executed. Examine those papers and state whether or not those were executed at the time the deed was executed.

A. Yes, sir.

Mr. REGAN.—I now offer the same in evidence and ask that they be marked United States Exhibit 78. They are the same as United States Exhibit 46, with this exception: the blanks are filled in and the documents are executed.

(Said documents so offered in evidence are marked United States Exhibit 78, read in evidence and are as follows:)

**U. S. Exhibit No 78—Agreement August 10, 1911,
Panama Dev. Co. and Elizabeth Leach.**

“PANAMA DEVELOPMENT COMPANY.

LAND AGREEMENT.

THIS AGREEMENT made and entered into this Tenth day of August, 1911, by and between the PANAMA DEVELOPMENT COMPANY, a CORPORATION hereafter known as the party of the first part, and Elizabeth Leach of Los Angeles, California, U. S. A., party of the second part.

WITNESSETH:

The said party of the second part, being desirous of purchasing One Thousand acres of Government land in the Province of Cocle, Republic of Panama, and whereas the party of the first part, through its authorized agents, is able to locate and purchase said land as an agent for the party of the second part.

NOW THEREFORE, the said party of the second part does hereby authorize, appoint, designate and name the PANAMA DEVELOPMENT COMPANY as her true and lawful agent and attorney to purchase in the name of the party of the second part One Thousand acres [353] of agricultural land suitable for the cultivation of Sugar Cane and ——— acres of timber land in the Province of Cocle (Bk. 49) Agua Dulce, Colony, Republic of Panama.

IT IS FURTHER AGREED that for and in consideration of the party of the first part through its authorized agents locating and purchasing said lands, the party of the second part hereby agrees to pay

to the party of the first part the sum of \$2.50 per acre for each and every acre so located and purchased.

AND IT IS FURTHER AGREED by and between the parties hereinbefore mentioned, that a further sum of \$2.50 for each and every acre so located and purchased shall be paid to the party of the first part within a period of four years, it being optional upon the party of the second part as to when it shall complete title during the period named, it being mutually understood and agreed that the party of the second part shall not be called upon to pay any interest or taxes under this agreement.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals the day and year first above written.

[Seal]: PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH, (Seal)
Vice-Pres.

ELIZABETH LEACH. (Seal)

Signed, sealed and delivered in the presence of
G. L. MAYNARD. (Seal)

(Second Page.)

PANAMA DEVELOPMENT COMPANY.

Received on the within contract the sum of
Twenty-Five Hundred Dollars (\$2500.00).

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH,
Vice-Pres. [354]

“POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS
that I do hereby constitute and appoint SENOR

(Testimony of John Redpath.)

HERNAN DE LA GUARDIA my true and lawful Attorney with full power of substitution for me and in my name and stead to locate and purchase Government land in the Republic of Panama, and to attend to all matters pertaining to same with all the powers I would possess if personally present.

IN WITNESS WHEREOF I have hereunto set my hands and seal this 10th day of August, 1911.

ELIZABETH LEACH. (Seal)

Signed, sealed and delivered in the presence of
G. L. MAYNARD. (Seal)"

Mr. REGAN.—As a further part of that exhibit is a duplicate of the document which I just read to you, and, in addition, a power of attorney, which I read also. I now offer in evidence the agreement just identified by the witness as parts of the papers executed by Mrs. Leach, and ask that it be marked United States Exhibit 79.

(The said document so offered in evidence is marked United States Exhibit 79, read in evidence and is as follows:)

**U. S. Exhibit No. 79—Agreement—August 9, 1911,
Panama Dev. Co. and Elizabeth Leach.**

"No. 155."

AGREEMENT made this 9 day of August, nineteen hundred and eleven, between the PANAMA DEVELOPMENT COMPANY, a corporation, *part* of the first part, and Elizabeth Leach, of Los Angeles, party of the second part.

WITNESSETH:

WHEREAS, the party of the second part is the owner of certain Sugar lands in Panama, located in the Province of Cocle, Panama, and whereas the party of the second part desires the same cleared, cultivated and planted to Sugar Cane.

NOW THEREFORE, it is mutually agreed by and between the parties hereto, that the party of the first part in consideration of receiving one-half of the crop, will clear or cause to be cleared, One Thousand acres of sugar land, planting the same with sugar cane and harvesting and selling the crop, and take one-half of net return in full payment of same.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the party of the first part will render the party of the *secnd* part true and accurate accounts of expenses and disbursements, together with receipts from sugar cane, and that these accounts will [355] be certified to by a competent auditor, approved by both parties.

FURTHERMORE, that the party of the second part may at all times have access to the accounts covering said development work.

This agreement to continue for four years from date and to expire August 9, nineteen hundred and fifteen, unless previously dissolved by mutual consent.

Witness our hands and seals this 9 day of August, nineteen hundred and eleven. Development to begin

(Testimony of John Redpath.)

within nine months from this date.

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH.

ELIZABETH LEACH.

Witness:

G. L. MAYNARD.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 79. Filed October 28, 1913. Wm. M. Van Dyke. By Robert E. Rinehart, Deputy Clerk.

I retained copies of the first paper marked Land agreement, and Power of Attorney and those were to be sent to Panama to be filed with the Panama Government. Mrs. Leach was so told at that time. Mrs. Leach retained the first page of the land agreement and the receipt for \$2500 to Mr. Smith at New Orleans at Lyman's request, and about that time I gave him a check for \$300. The papers which I retained were filed in our office. I next saw them in the Consolidated Realty Bldg., in the early part of September, after Lyman left Los Angeles. Immediately after this transaction with Mrs. Leach was consummated, I had a conversation with Dr. Lyman with reference to the disposal of the property. He instructed me to borrow as much as I could possibly get on it. I told him that I judged we could raise [356] \$1200. Lyman said that that was the quickest way to turn the property into money at that time. I made efforts to mortgage it and finally mortgaged it for \$1100. I deposited it to the credit of the company and sent \$300 to ——. I executed the mortgage at the direction of Dr. Lyman. Mr. Smith de-

(Testimony of John Redpath.)

layed his trip to Panama on account of the shortage of funds awaiting the consummation of this Leach deal. I have known Haldeman for about 20 years. He came to the Panama Development Company early in June. I introduced him to Dr. Lyman. Mr. Haldeman and Mr. Lyman left me and went into the front office and looked over the map. I told Lyman that the Haldemans had property in Riverside which was mortgaged. I knew the property myself and knew they had an equity of at least \$10,000 in that property. Mr. Haldeman wished to go down to Panama to raise sugar and other things and he offered to make a trade. I spoke to Dr. Lyman about it and he told me to go ahead and give them—we called the equity \$10,000—and give him the 2,000 acres of land in Panama Government land—for the equity. We looked over the Agua Dulce map and Lyman said “give him that 1,000 acres” (indicating) the one marked JCH, Lot 47, known afterwards as the Haldeman Purchase. I received instructions from the defendant with reference to the Haldeman purchase. He said the Haldeman purchase was a good thing to tell people about. That it was a good sale. Another contract was made at the same time for 2,000 acres with Mrs. Haldeman.

Q. I show you this agreement and ask you whether or not this is part of the land agreement which was executed at that time—whether that is the part that the company kept?

A. Yes, sir, this is the part the company kept; that was the power of attorney that was executed by Mrs. Haldeman.

(Testimony of John Redpath.)

Q. What was she told would be done with the papers kept by the Panama Development Company?
[357]

A. That they would be filed and that she would get a title in due time.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 81.

U. S. Exhibit No. 81—Agreement, Panama Development Co. and Frances B. Haldeman.

“PANAMA DEVELOPMENT COMPANY.

LAND AGREEMENT. No. 23

THIS AGREEMENT made and entered into this *Two Thousand* day of June, 1911, by and between the PANAMA DEVELOPMENT COMPANY, a CORPORATION hereafter known as the party of the first part, and Frances B. Haldeman of Riverside, California, U. S. A., party of the second part.

The said party of the second part, being desirous of purchasing two thousand acres of Government land in the Provinces of Cocle Chiriqui Veraguas, Republic of Panama, and whereas the party of the first part, through its authorized agents, is able to locate and purchase said land as an agent for the party of the second part.

NOW, THEREFORE, the said party of the second part does hereby authorize, appoint, designate and name the PANAMA DEVELOPMENT COMPANY as my true and lawful agent and attorney to purchase in the name of the party of the second part Two Thousand acres of agricultural land suitable for

the cultivation of 1000 Sugar, 500 Coffee Bananas, 100 Cocoanuts and Four hundred acres of timber land in the Provinces of Cocle Chiriqui Veraguas, Republic of Panama.

IT IS FURTHER AGREED that for and in consideration of the party of the first part through its authorized agents locating and purchasing said lands, the party of the second part hereby agrees to pay to the party of the first part the sum of \$2.50 per acre for each and every acre so located and purchased.

AND IT IS FURTHER AGREED by and between the parties hereinbefore [358] mentioned, that a further sum of \$2.50 for each and every acre so located and purchased shall be paid to the party of the first part within a period of four years, it being optional upon the party of the second part as to when she shall complete Title during the period named. It being mutually understood and agreed that the party of the second part shall not be called upon to pay any interest or taxes under this agreement.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals the day and year first above written.

PANAMA DEVELOPMENT COMPANY.

JOHN REDPATH, (Seal)

Vice-Pres.

FRANCES B. HALDEMAN. (Seal)

Signed, sealed and delivered in the presence of

L. R. SMITH. (Seal)

(Testimony of John Redpath.)

“Had P. of Atty.”

“No. 23.”

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS that I do hereby constitute and appoint SENOR HERNAN DE LA GUARDIA my true and lawful attorney with full power of substitution for me and in my name, place and stead to locate and purchase Government land in the Republic of Panama, and to attend to all matters pertaining to same with all the powers I would possess if personally present.

IN WITNESS WHEREOF I have hereunto set my hands and seal this twenty fourth day of July, 1911.

FRANCES B. HALDEMAN. (Seal)

Signed, sealed and delivered in the presence of

L. R. SMITH. (Seal)

[Endorsed]: 672 ——. U. S. v. Lyman. U. S. No. Exhibit 81. Fld. Oct. 28, 1913. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Deputy Clerk.
[359]

Q. (Mr. REGAN). After this land agreement and power of attorney, U. S. Exhibit 81 left the office of the Panama Development Company, where did you next see it?

A. I saw it in my attorney's office, as far as I know it never reached Panama.

Q. I show you this agreement and ask you whether or not this agreement for cultivation was executed at the same time.

A. All executed at the same time.

(Testimony of John Redpath.)

Mr. REGAN.—I offer it in evidence and ask that it be marked United States Exhibit 82. It is dated June 24, 1911.

(The said document so offered in evidence is marked United States Exhibit No. 82, is read in evidence and is as follows:)

**U. S. Exhibit No. 82—Agreement—June 24, 1911,
Panama Dev. Co. and Frances B. Haldeman.**

“AGREEMENT made this twenty-fourth day of June, 1911, between the PANAMA DEVELOPMENT COMPANY, a corporation, party of the first part, and FRANCES B. HALDEMAN, of Riverside, California, party of the second part:

WITNESSETH: WHEREAS, the party of the second part is the owner of certain sugar lands in Panama, located in the Province of Cocle, Panama, and whereas the party of the second part desires the same cleared, cultivated and planted to sugar cane,

NOW, THEREFORE, it is mutually agreed by and between the parties hereto, that the party of the first part in consideration of receiving one-half the crop, will clear or cause to be cleared, one thousand (1000) acres of sugar land, planting the same with sugar cane and harvesting and selling the crop, and take one-half of gross returns in full payment for same.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the party of the first part will render the party of the second part true and accurate accounts of expenses and disbursements, together with

(Testimony of John Redpath.)

receipts from sugar cane, and that these accounts will be certified to by a competent auditor, approved by both parties. [360]

FURTHERMORE, that the party of the second part may at all *time* have access to the accounts covering said development work.

This agreement to continue for three years and five months and six days from date and to expire November 1st, 1914, unless previously dissolved by mutual consent.

Witness our hands and seals this twenty-fourth day of June, 1911.

PANAMA DEVELOPMENT CO. (L. S.)

JOHN REDPATH,

Vice-President.

FRANCES B. HALDEMAN. (L. S.)

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 82. Fld Oct. 28, 1913. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Deputy Clerk.

After the completion of the Haldeman deal the defendant said he desired to sell the property and afterwards came in with a deed to himself which he wished to be executed. I had a conversation with him at that time as to why it was done. He said that money was required to pay the Panamanian Government. He said he wanted to deed it to himself to raise money. He brought the deed to me for execution. He told me to sign it and I signed it.

Mr. REGAN.—I now offer in evidence United States Exhibit 84. This is a grant deed of the Halde-

(Testimony of John Redpath.)

man property, just received by the Panama Development Company, from the Panama Development Company to John Grant Lyman of the City of Los Angeles in consideration of \$10.00 It was executed on the 14th day of August, 1911, signed Panama Development Company, by John Redpath, Vice-President, by L. R. Smith, Secretary, and bears the seal of the Panama Development Company. Acknowledged by John Redpath and L. R. Smith, and there appears on the back the endorsement "Received for record August 18, 1911, at 26 minutes past 11 o'clock A. M. at request of grantee, J. S. Logan, recorder, Riverside County." [361]

Mr. REGAN.—I show you this deed executed by Mr. and Mrs. Haldeman an the Panama Development Company, dated the 29th day of June, 1911, and ask you whether or not that deed was received by the Company. I will ask you whether or not the deed was executed by Mr. and Mrs. Haldeman and received by the Panama Development Company?

A. Yes, sir.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 83.

(The said deed so offered in evidence is marked United States Exhibit No. 83 and the said deed is as follows:)

**U. S. Exhibit No. 83—Deed, June 29, 1911, Frances
B. Haldeman et al. and Panama Dev. Co.**

“GRANT DEED

(Code Deed)

C. C. Sec. 1092.

FRANCES B. HALDEMAN AND ROBERT J. HALDEMAN, her husband, of Riverside, of the County of Riverside, State of California. FOR AND in CONSIDERATION OF THE SUM OF Seventeen Thousand (\$17,000.00) Dollars the receipt whereof is hereby acknowledged, do hereby Grant to the PANAMA DEVELOPMENT COMPANY, of Los Angeles, California,

ALL THAT REAL PROPERTY SITUATE IN Riverside, County of Riverside State of California, described as follows: All of that portion of Blocks Seven (7) and Eight (8) and Lots One (1) and Two (2) in Block Six (6) of D. C. TWOGOOD'S Orange Grove Tract as shown upon a map of said Tract of record in the office of the County Recorder of the County of San Bernardino in Book Seven (7) of Map — at page 42 thereof, that is bounded and described as follows, to wit:

Commencing for a place of beginning at a point where the southerly line of Prospect Street (sometimes called Prospect Avenue) intersects the easterly line of Olivewood Avenue; running thence easterly on and along the south line of Prospect Street [362] 326 feet to a point distant 106.20 feet easterly from the point where the easterly line of Mulberry Street

produced, would intersect the said southerly line of said Prospect Street; running thence southerly at right angles to said southerly line of said Prospect Street, 219.3 feet, to the lands heretofore sold and conveyed to J. C. Chambers: running thence at a right angle westerly 237.4 feet more or less to the easterly line of said Olivewood Avenue: and running thence northerly, along the easterly line of said Olivewood Avenue, 236.5 feet, more or less, to the place of beginning; and being the same property described in Deed from ADALINE TWOGOOD and D. C. TWOGOOD, her husband, to FRANCES B. HALDEMAN, recorded in Book 163 of Deeds at page 135 thereof, in the office of the County Recorder of Riverside County, subject to a Mortgage made September 7th, 1909, to HUGH A. BAIN for Seven Thousand (\$7,000.00) Dollars, at seven per cent (7%) interest, and due three (3) years after date, recorded September 22nd, 1909, Book 85, page 141.

WITNESS their hands this twenty-ninth day of June, nineteen hundred and eleven.

FRANCES B. HALDEMAN. (Seal)

ROBERT J. HALDEMAN. (Seal)

Signed, sealed and delivered in the presence of
M. E. CAREY,
JOHN REDPATH.

State of California,
County of Los Angeles,—ss.

On this 29th day of June in the year nineteen hundred and eleven, before me, M. E. Carey (a Notary

(Testimony of John Redpath.)

Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Francese B. Haldeman and Robert J. Haldeman, her husband known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they [363] executed the same.

WITNESS my hand and official seal.

(Seal)

M. E. CAREY,

Notary Public in and for said County, State of California.

My commission expires March 8, 1913.

[Endorsed]: No. 4. GRANT DEED. (Code Deed). Haldeman to Panama D. Co., 216 Mercantile Bldg., Dated L. A. 19—. Received for Record Jun. 30, 1911, at 19 min. past 9 o'clock A. M. at Request of Grantee. Copied in Book No. 331 of Deeds, page 64 et seq., Records of Riverside County, California. J. S. Logan, Recorder. By ———, Deputy Recorder. Fees, \$1.50.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit No. 83. Filed Oct. 28, 1913. Wm. M. Van Dyke, ——. By Robert E. Rinehart.”

“After the Haldeman property had been received, the defendant asked me to make an effort to sell the property, and I advertised the property for sale here in Riverside and tried to get a purchaser for it.”

Q. Do you remember a man named Ryan?

A. Yes, sir. I met him in the office of the Panama Development Company. I had a talk with

(Testimony of John Redpath.)

Ryan in the presence of Lyman about his knowledge of Panama lands. Ryan said he knew Chiriqui, Bocas del Toro, and Panama in general. This conversation occurred in June.

Q. What did Lyman tell you about Ryan?

A. Lyman said that Ryan was an expert on Panama lands and a good hand for cultivation—to look after cultivation.

Q. Now, I will show you this document and ask you whether or not you signed that.

A. I signed that, at the direction of Dr. Lyman. That [364] is Mr. Ryan's signature.

Mr. REGAN.—I now offer the same in evidence and ask that it be marked United States Exhibit 85.

(The said document so offered in evidence is marked United States Exhibit 85, read in evidence and is as follows:)

**U. S. Exhibit No 85—Agreement, June 23, 1911,
Panama Dev. Co. and E. D. Ryan.**

“AGREEMENT made this 23 day of June, 1911, between the PANAMA DEVELOPMENT COMPANY, a corporation, party of the first part, and E. D. RYAN, party of the second part:

NOW, therefore, WITNESSETH: It is hereby mutually agreed that the party of the first part shall employ the party of the second part as General Manager of the said company in all the operations of the said company have or may have in the Republic of Panama.

The party of the second part agrees to explore

land in the Republic of Panama and make report to the said party of the first part, the culture advised, and any other information he may obtain.

The party of the first part agrees to pay all traveling expenses of the party of the second part and a salary of \$100 U. S. C. per month, while traveling on behalf of said party of the first part.

The party of the first part also agrees to pay the party of the second part an additional amount of \$150. U. S. C. per month when cultivation is started.

The party of the first part also agrees to hold in trust 5% of the stock of the company, the dividends of same to be paid to the party of the second part, until they shall equal the sum of \$250. U. S. C. per month; after which the party of the first part shall be called upon to make payments of dividends on 2% of the company's stock to the party of the second part; these dividends do not include any profit made from sale of raw land.

The party of the second part agrees to carry out the instructions [365] of the party of the first part to the best of his ability and to give the party of the first part the advantage of any and all information that he may acquire and to give the party of the first part the benefit of all options or property that he may secure at the net cost to him.

This agreement to begin on the first day of July, 1911, and to continue until the first day of July,

1914, unless previously cancelled by *mutal* consent.

PANAMA DEVELOPMENT COMPANY.

By JOHN REDPATH, (L. S.)

Vice-Pres.

E. D. RYAN, (L. S.)

Witness.

G. L. MAYNARD.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 85. Filed Oct. 28, 1913. Wm. M. Van Dyke. By Robert E. Rinehart, Deputy Clerk.

Shortly after the execution of that agreement with Ryan he left for Panama. I gave Ryan money to buy supplies and money to take him down there. This was done at Doctor Lyman's direction. After Ryan left I had a conversation with Lyman about Smith going down to Panama. Lyman said he was prepared to send Smith down there as soon as possible for the purpose of getting the office into shape in Panama, to file the contracts with the Government and look after the land. Lyman asked Smith in my presence to report the conditions down there and Smith said he would. I asked Lyman several times in Smith's presence why these contracts were not filed and he said he would attend to it. After the conversation the contracts were sent over to the Consolidated Realty Building to the office of Dr. Lyman. The next time I saw the contracts was after Lyman left for San Francisco, the last of August. I saw them in bulk. So far as I [366] know they were all there. I didn't examine the contracts to see. Lyman said he was going to raise the

price of land from \$5.00 to \$6.00 an acre. About the last week in August Lyman told me he was going up to San Francisco on business of the Company and would be gone about a week. He said Byrd was going to the house on Hobart Boulevard to keep it while he was away.

There was an automobile there that was used by Lyman. It was not in the service of the company all the time. If a salesman wanted to use it he had to ask Dr. Lyman for it. I paid the chauffeur by check drawn on the Panama Development Company, and also made payments for the automobile from the account of the company. At this time Amiel, Smith and Ryan had gone to Panama. Up to August 30, 1911, creditors had been coming in for money with accounts. The letter you show me was received through the mail. (The letter so identified was introduced and read in evidence, marked U. S. Exhibit 88, and reads as follows:)

**U. S. Exhibit No. 88—Letter, September 1, 1911,
“L” to “Redpath.”**

(Letterhead Hotel St. Francis.)

September 1, 1911.

Dear Mr. Redpath:—

When is the Howard note due? Call them up and tell them you would like to pay \$250 on account and give them a new note for \$500 to run 30 days for the balance.

Don't worry about the *Segogram*, or the other advertising business for that matter, as they have all had a lot of money and can well afford to wait on

you, if necessary. You should be able to sell that Edendale house at a price. Have you given it to the other broker? Advertise the Atlanta Oil Stock for sale, providing it is not already sold. There is no use waiting on those people longer. All Honolulu reports are very favorable, and we surely shall be able to win out there. Now, don't worry, you have got nothing but trifles there to annoy you, and there is no reason for being disturbed. Will get busy as soon as you [367] send me up the information asked for yesterday.

Sincerely yours,

L.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 88. Fld. Oct. 28, ——. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Depty Clerk.

■ The letter dated Sept. 4. 1911, which you show me was received by me. (The letter referred to was introduced and read in evidence, marked U. S. Exhibit 89, and reads as follows:)

**U. S. Exhibit No. 89—Letter, September 4, 1911, ———
to "Mr. Redpath."**

(Letterhead of Hotel St. Francis).

San Francisco, Sept. 4, 1911.

Dear Mr. Redpath:

There is something wrong with the way you mail letters there. Yours wirtten Sept. 2nd at 1:00 P. M. was only received this morning. I note what you have to say regarding the small bank balance and that collectors are around with bills for about \$1,000. Thank heaven, my dear Mr. Redpath, they are not

judgments; if all I had to consider was a few unpaid bills I should consider myself in clover, but there are matters much more serious than this. First off, we must take care of Smith; what his real difficulties are I cannot imagine, but I know Guardia can help him if he really desires, and he must be forced to do so. Thus far I have not been able to raise a solitary cent here, and it does not look as though I could count on any money before the 14th inst. I am doing everything I possibly can short of going out and knocking somebody down and taking it away from them.

Now as to the bills, it does not seem to me that you have anything more serious to immediately meet than the Howard bill, which surely can be extended with a small payment; or at the worst assign over to him the Allendale Property, and as to the rest of the bills, simply tell the collectors we cannot pay them; at the very worst they can do no more than sue, which they are not [368] likely to do for a week or two, and if we get a little time, we will be all right. Those that are very insistent give them thirty day notes. Meanwhile get busy with everybody possible and try and raise as much cash as possible. I don't see that I could be any possible help there other than to stave off these collectors, which you certainly ought to be able to do. I am trying hard to raise some money here and I am thoroughly convinced from the talk I had with a Hawaiian Sugar planter last night that it will be possible to raise there all we require and put us in clover, but I can't be in two or three places at once, and it seems to me the most

(Testimony of John Redpath.)

important place for me is where money can be raised rather than trying to run that office; no one is more interested in its future, or has a greater stake, than I have, as every dollar I possess is in the business, and am doing everything I possibly can to save it and will continue to do so until the very last drop out of the gun; but it certainly is discouraging to feel that I have got to take care of the office and meet collectors, which after all is not a difficult thing to do, and one which you should be able to take care of; to be sure, it is disagreeable, but there are a great many things that are worse, but if you can put up to our people that we are willing and anxious to pay and will pay, it ought not to be very difficult to put them off for a while until money can be raised to take care of them. I am attempting to do this without regard to what success you may meet with, but I cannot do it on an instant's notice. Go to the party who bought the Montbello property and say to them that if they will give you \$1500. this week you will turn the property over to them. This is a discount of \$500 and ought to be a sufficient inducement to get them to deal.

Yours truly,

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 89. [369] Fld. Oct. 28, 1913. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Deputy Clerk.

The WITNESS.—The cablegram you show me was received by me at about the date it bears. (The

(Testimony of John Redpath.)

cablegram so identified was introduced and read in evidence, marked U. S. Exhibit 91, and reads as follows:)

**U. S. Exhibit No. 91—Telegram, September 4, 1911,
to "Panamano."**

(Western Union Cable Message Blank).

Panama, Sept. 4-11.

Panamano

Los Angeles (California)

What do you propose to do? Cannot hold out much longer. Why dont you *anser*? Will be arrested unless you can settle. Amiel serious.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 91. Fld. Oct. 28, 1913. Wm. M. Van Dyke, ————. By Robert E. Rinehart, Deputy Clerk.

The WITNESS.—the telegram you show me was sent by me to Lyman. (The telegram so identified was introduced and read in evidence, marked U. S. Exhibit 92, and reads as follows:)

U. S. Exhibit No. 92—Telegram "R" to J. G. Lyman.
(Western Union blank.)

Los Angeles, Cal. 4.

J. G. Lyman,

Genl. Dely.

San Francisco, Cal.

Come back immediately very serious Smith has cabled twice Wire office.

R.

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 92. Filed Oct. 28, 1913. Wm. M. Van

(Testimony of John Redpath.)

Dyke. —————, Deputy Clerk.

The WITNESS.—The telegram you now show me was received by me and the writing at the bottom is my own, and is a copy of the telegram sent in reply. (The telegram referred to [370] and writing on the bottom was then introduced and read in evidence, marked U. S. Exhibit 93, and reads as follows:)

U. S. Exhibit No. 93—Day-Lettergram, September 5, 1911, "L" to John Redpath.

(Western Union Day Letter Blank.)

San Francisco, Sept. 5, 1911.

John Redpath,

216 Mercantile Place, Los Angeles, Cal.

Am doing everything that lies within my power to raise the necessary money and have so cabled Smith. Meanwhile do not relax your own efforts to raise the necessary funds. Try on the Montabello property as suggested in yesterdays letter. Am mailing something that may held raise necesary funds.

L.

Mr. REGAN.—On the bottom in the handwriting of the witness is: 243 p.

Answer.

Wire rec. demand made by contract holders for One Thousand Dollars within 24 hours, nothing in sight here Come at once.

[Endorsed]: 672—Crim. U. S. vs. Lyman. U. S. Exhibit No. 93. Filed Oct. 28, 1913. Wm. M. Van Dyke. By Robert E. Rinehart, Deputy Clerk.

(Testimony of John Redpath.)

The WITNESS.—The cablegram dated Sept. 5. 1911, was received by me. (A translation of the cablegram so identified was introduced and read in evidence, marked U. S. Exhibit No. 94, and reads as follows:)

U. S. Exhibit No. 94—Cablegram, September 5-11,—
“Panamano.”

(Cable Message Blank, Western Union.)

Sept. 5-11.

Panamano,

Los Angeles, (Cal)

Amiel will refer the matter to consul. Will suspend operations California unless settled in full. Immediate action will be taken. Why dont you answer? [371]

[Endorsed]: 672—Crim. U. S. v. Lyman. U. S. Exhibit No. 94. Filed Oct. 28, 1913. Wm. M. Van Dyke, Clerk. By Robert E. Rinehart, Deputy Clerk.

The WITNESS.—The cablegram you now show me was received by me. (Said cablegram was introduced and read in evidence, marked U. S. Exhibit 95, and reads as follows:)

